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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 160 (MKV)

5 SETH FISHMAN,

6 Defendant.

Trial

7 -----x

New York, N.Y.  
January 26, 2022  
9:24 a.m.

9 Before:

10 HON. MARY KAY VYSKOCIL,

11 District Judge  
12 -and a Jury-

13 APPEARANCES

14 DAMIAN WILLIAMS

United States Attorney for the  
Southern District of New York

15 BY: ANDREW C. ADAMS

SARAH MORTAZAVI

16 ANDEN F. CHOW

Assistant United States Attorneys

17 SERCARZ & RIOPELLE, LLP

Attorneys for Defendant Fishman

18 BY: MAURICE H. SERCARZ

19 -and-

LAW OFFICE OF MARC FERNICH

20 BY: MARC A. FERNICH

21  
22 ALSO PRESENT: KARLINE JUNG, Paralegal Specialist  
23  
24  
25



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(Trial resumed; jury not present)

THE COURT: Please be seated, everyone. All right. I had one thing I wanted to raise with the parties.

Mr. Adams, I assume in connection with your plan to call Ross Cohen, you've made disclosures to the other side, you made a motion in connection with unsealing certain items?

MR. ADAMS: Yes, your Honor. And all of the 3500 material produced with respect to Mr. Cohen has been produced. That includes things that were formerly under seal.

THE COURT: All right. Are you contemplating, though, any limitations on his examination or cross-examination?

MR. ADAMS: Not at this point, no, your Honor.

THE COURT: All right. So there's nothing we need to talk about with respect to that?

MR. ADAMS: No.

THE COURT: Is it your intent to unseal everything?

MR. ADAMS: With respect to Mr. Cohen, I expect so.

THE COURT: All right. Well, I'll wait for an application from you.

MR. ADAMS: Certainly.

THE COURT: All right.

MR. ADAMS: Once he's testified, I expect that the reason for keeping it under seal would dissipate.

THE COURT: That's what I anticipated.

Okay. All right. Mr. Sercarz?



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1           MR. SERCARZ: In that regard, and I just want to make  
2           sure there hasn't been an oversight. I have information  
3           regarding the plea to one count of adulteration and  
4           misbranding. I do not have a written cooperation agreement. I  
5           don't know whether there is one. And I may have overlooked it,  
6           but I just want to make sure that this isn't a situation where  
7           it hasn't been turned over.

8           MR. ADAMS: It's marked in the 11,000 series in the  
9           exhibits, but you should have it, and we'll confirm that you  
10          do.

11          MR. SERCARZ: Thank you.

12          MR. ADAMS: Fair enough.

13          THE COURT: Is there anything else we should discuss?

14          MR. SERCARZ: Just briefly, your Honor, I represent to  
15          the Court that I took a Covid test this morning. It came back  
16          negative. I have the results on my cell phone. They told us  
17          that they are not transmitting that information to chambers.

18          THE COURT: Correct. I told you that yesterday.

19          MR. SERCARZ: I just wanted you to know. I thought  
20          that would be advisable.

21          THE COURT: Thank you. What about Mr. Fernich and  
22          Dr. Fishman?

23          MR. FERNICH: I have not done mine yet. I will do it  
24          at the quickest break or lunch hour, but I don't plan to be in  
25          the box today.



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1 THE COURT: And Dr. Fishman?

2 THE DEFENDANT: I'll take mine during lunch.

3 THE COURT: Okay. And the government, I assume you're  
4 all squared away?

5 MR. ADAMS: Yes, your Honor. Dr. Cole tested  
6 yesterday, but I was told this morning that she ought to test  
7 again today, since she didn't take the stand. So she's down  
8 here doing it now, but there should be plenty of time between  
9 now and when she gets on the stand.

10 THE COURT: Okay.

11 MR. FERNICH: Just to be clear, I had attempted to  
12 test again yesterday, and they told me to wait until today.

13 THE COURT: I mean, you all told me yesterday the  
14 protocol is every other day. I mean, Dr. Cole hadn't  
15 previously tested, but in terms of the lawyers, you told me,  
16 and the order clearly says, the protocol is every other day.

17 MR. FERNICH: I'm pretty nuts about it. I'll take as  
18 many as I can take.

19 THE COURT: That's fine. I don't have a concern about  
20 that.

21 All right. Anything else we should talk about before  
22 the jurors come on up?

23 MS. MORTAZAVI: Nothing from the government.

24 MR. SERCARZ: Did you have something you wanted to  
25 discuss that you and me talked about?



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1 MS. MORTAZAVI: Briefly, your Honor. Just for  
2 purposes of clarification of the record and the exhibits that  
3 have been entered, I asked Mr. Sercarz if I could retake the  
4 stand and clarify certain hard exhibits. I believe there's a  
5 stipulation we may not have offered, that I'd like to now offer  
6 and some clarification about what I did offer into evidence. I  
7 just ask for the opportunity to do it before cross-examination  
8 begins.

9 MR. SERCARZ: No objection.

10 THE COURT: All right. Thank you. You know, I assume  
11 you're all keeping copies of the exhibits that have been  
12 admitted and keeping a list of them so that when we get to the  
13 deliberations, if the jurors ask for things, you will be  
14 prepared to provide copies.

15 MS. MORTAZAVI: So, your Honor, at the end of each  
16 day, we review the transcript to determine what has been  
17 offered and admitted, and we are preparing and prepared to, at  
18 the end of the trial, compile electronic copies of everything  
19 that has been admitted.

20 THE COURT: Yes.

21 MS. MORTAZAVI: We'll confer with defense counsel to  
22 ensure that there is agreement, and we'll have that available  
23 to the Court. I believe that's the courthouse's protocol  
24 during Covid; so we will make that available if the jurors  
25 request it.



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1           THE COURT:  You're supposed to provide it to us on a  
2 flash drive or thumb drive.  We at some point, not now because  
3 I don't want to holdup the jury, have to talk about how we are  
4 going to handle requests from the jurors for exhibits.

5           I'll tell you now, I'm not a big fan of giving the  
6 jurors the thumb drive and saying, have at it, but we'll talk  
7 about that, you know, at some point.

8           And as we see towards the end of the week where the  
9 government's at with its case, whether you're on track to rest  
10 on Friday, we should talk about scheduling a charging  
11 conference too.  And I guess, at some point, Mr. Sercarz or  
12 Mr. Fernich, we will need an estimate from you about how long  
13 you anticipate your case will be, if any.  Okay?

14          MR. SERCARZ:  Yes, your Honor.

15          THE COURT:  All right.  Thanks.  So let me go check on  
16 the status of the jury and, hopefully, we'll be ready to get  
17 going.

18          (Recess)

19          THE COURT:  Please be seated, everyone.  We're told  
20 the jurors are on their way.

21          (Pause)

22          (Jury present)

23          THE COURT:  Please be seated, everyone.

24          All right.  Good morning to our jurors, and thank you  
25 all for being so punctual.  We're working very hard to try to



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1 keep everything on schedule. I told you I would update you  
2 periodically; so it looks like everything is on schedule, as we  
3 talked about during jury selection. We may even be slightly  
4 ahead of where we thought we would be, and I will continue to  
5 update you as we get closer to the weekend. Okay?

6 All right. So I believe Ms. Mortazavi has a couple of  
7 items for the record with respect to exhibits. Please  
8 remember, as I told you before, just as testimony is evidence,  
9 so too are stipulations and exhibits. So Ms. Mortazavi is  
10 going to put a few things on the record, and then we'll have  
11 the cross-examination of Dr. Bowman.

12 All right. Ms. Mortazavi.

13 MS. MORTAZAVI: Thank you, your Honor. For purposes  
14 of the record, I've read into the record yesterday Government  
15 Exhibit 9014, which was a stipulation between the parties  
16 governing a transcription. I did not formally offer that  
17 stipulation into evidence, and I do so now.

18 MR. SERCARZ: No objection.

19 THE COURT: It is received in evidence.

20 (Government's Exhibit 9014 received in evidence)

21 MS. MORTAZAVI: Thank you, your Honor.

22 And yesterday, with respect to Government  
23 Exhibit 9011, another stipulation between the parties, I had  
24 entered into evidence certain exhibits. I had intended to also  
25 offer, with my offer of the exhibits contained in that



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1 stipulation, all of the subparts, which include the  
2 transcriptions.

3 To the extent that's not clear from the record, I  
4 would now like to offer Government 101-AT through 199-T and I'd  
5 also like to offer Government Exhibits 203, 204 and 205 into  
6 the record.

7 THE COURT: All right. That will all be part of the  
8 evidence in this case. It is received.

9 (Government's Exhibits 101-AT through 199-T, 203, 204  
10 and 205 received in evidence)

11 MS. MORTAZAVI: And if I could have one moment, your  
12 Honor?

13 THE COURT: Sure.

14 (Pause)

15 MS. MORTAZAVI: And, your Honor, yesterday I read into  
16 the record Government Exhibit 9005, which was yet another  
17 stipulation between the parties. Upon consent of the parties,  
18 that stipulation has been amended to include one additional  
19 exhibit, that's Exhibit No. 3458. The changes have been made  
20 to the original version of the exhibit that was offered. We  
21 will provide that copy to the Court for the record, and we now  
22 offer Government Exhibit 3458.

23 THE COURT: All right. Government Exhibit 3458 and  
24 the amended stipulation are received.

25 MS. MORTAZAVI: Thank you, your Honor.



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Bowman - Cross

1 (Government's Exhibit 3458 received in evidence)

2 Nothing further.

3 THE COURT: Thank you. All right. Will someone  
4 please ask Dr. Bowman to return to the witness stand. Thank  
5 you.

6 Good morning, Dr. Bowman.

7 THE WITNESS: Good morning.

8 THE COURT: All right. Good morning, Dr. Bowman. I  
9 remind you that you remain under oath. This morning we'll have  
10 cross-examination by Dr. Fishman's lawyers. You may remove  
11 your mask while you're in the witness stand with the enclosure  
12 and the HEPA filter. Thank you.

13 THE WITNESS: Okay.

14 THE COURT: Mr. Sercarz? Yes, please.

15 JEAN BOWMAN, (Resumed)

16 CROSS-EXAMINATION

17 BY MR. SERCARZ:

18 Q. Good morning, Dr. Bowman.

19 A. Good morning.

20 Q. My name is Maurice Sercarz. I represent Dr. Fishman.

21 For several hours yesterday, you reviewed items on a  
22 product list, Government's Exhibit 711; do you recall your  
23 testimony?

24 A. Yes, sir.

25 Q. You were asked in each instance the name of the product,



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Bowman - Cross

1 correct?

2 A. I think in most instances.

3 Q. I'm sorry?

4 A. I think in most instances.

5 Q. All right. Whether the Government's Exhibit 711 contained  
6 any reference to the intended use; do you recall?

7 A. Yes. I didn't memorize the exhibits by the exhibit number.

8 Q. That's all right, but just all on that product list, that's  
9 what I'm going to ask you about. Okay?

10 A. Okay.

11 Q. And whether there were any representations regarding the  
12 effect of those products about which you testified yesterday;  
13 am I correct?

14 A. Yes.

15 Q. You were asked whether, as a result of those  
16 representations and those references, the item was a drug,  
17 correct?

18 A. Yes.

19 Q. And whether it had FDA approval; am I correct?

20 A. Yes.

21 Q. You were asked, in light of the fact that it was a drug,  
22 whether it -- withdrawn.

23 You were asked about the labels with the names of the  
24 drugs on them, correct?

25 A. Yes.



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Bowman - Cross

1 Q. And you were asked to describe all of the many deficiencies  
2 in the labels for those drugs; am I correct?

3 A. Yes.

4 Q. And then you were asked about something called a GRASE  
5 analysis, correct?

6 A. Yes.

7 Q. All right. Just so that I have the nomenclature correct,  
8 the spelling of that is GRAS, correct?

9 A. No, it's GRAS/E.

10 Q. Slash E?

11 A. Yes, generally recognized as safe and effective.

12 Q. Safe and effective. And by generally recognized, that  
13 means that there is sufficient scientific literature that is  
14 recognized by the FDA to support the introduction of that  
15 product as an FDA approved drug; is that correct?

16 A. Not exactly. It's a standard that is equivalent to the  
17 level of data that would be required for an approved product.

18 Q. In other words, that the approval is generally recognized  
19 in the scientific community; is that a fair description?

20 A. No, no, not at all. An approved product is not generally  
21 recognized as safe and effective, and it's only recognized as  
22 safe and effective within the confines of its approved  
23 application.

24 Q. I missed a word. If you could speak a little closer to the  
25 mic and raise your voice for me, I'd be grateful.



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Bowman - Cross

1 A. No, approved products are not generally recognized as safe  
2 and effective. Approved products are only safe and effective  
3 within their approved application, and all of the data in that  
4 application is proprietary to the company that developed it; so  
5 it's not publicly available.

6 Q. Okay. However, neither you nor anyone from the -- well,  
7 withdrawn.

8 You did not examine the products themselves; am I  
9 correct?

10 THE COURT: What products?

11 Q. Products that were seized, and that the jury observed in  
12 those exhibits with photographs; am I correct?

13 MS. MORTAZAVI: Objection, vague.

14 THE COURT: I think you have to be specific about what  
15 you're talking about, Mr. Sercarz.

16 MR. SERCARZ: Yes, your Honor.

17 BY MR. SERCARZ:

18 Q. In the course of your work for the government in this case,  
19 you did not examine products; am I correct?

20 A. Products, like in my hand, the container?

21 Q. Products, meaning drugs with labels on them.

22 A. I examined photographs of products with labels on them. I  
23 almost never have the opportunity to have an unapproved drug  
24 sitting on my desk in front of me. I review the evidence based  
25 on photographs and transcripts and other data that's available.



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Bowman - Cross

1 Q. Therefore, with regard to those items about which you  
2 testified yesterday, you are unable to say whether the  
3 ingredients that were listed on the products were indeed in the  
4 products; isn't that correct?

5 A. That is correct, but irrelevant to the conclusion.

6 Q. Irrelevant to your conclusion, but correct nonetheless; am  
7 I right?

8 A. First of all, the ingredients were nonspecific on most of  
9 the labels. So, yeah, I don't -- I don't know what's in them  
10 even if what's in them is supposed to be represented by the  
11 ingredient statement that's on there because it was not  
12 specific.

13 Q. You didn't test any items to see whether they worked as  
14 described on the labels, did you?

15 A. No.

16 Q. You did not have an opportunity to learn what the basis  
17 was, if any, for the representations contained in Government's  
18 Exhibit 711, that catalog of products about which you testified  
19 yesterday; isn't that correct?

20 A. Could you repeat that question?

21 Q. May I have it read?

22 (Record read)

23 A. It is correct to say that I was unable to do a deep dive on  
24 the individual ingredients in each product because they weren't  
25 listed on the label as required by law. That law applies to



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Bowman - Cross

1 approved and unapproved drugs.

2 Q. Now, you testified at the beginning of your testimony that,  
3 if I'm not mistaken -- if I am, please correct me -- that the  
4 purpose of the review that you conducted was to determine  
5 whether the product was safe and effective for its intended  
6 use; is that correct?

7 A. That is not correct. The purpose of the review is to  
8 determine whether the products are generally recognized as safe  
9 and effective by experts in the general open public literature  
10 for the intended use in the specific species. You can't apply  
11 human data to horses. You can't apply horse data to humans.  
12 It's species specific.

13 Q. In that regard -- and by the way, you were asked some  
14 hypothetical questions yesterday by the government during the  
15 course of your examination; am I correct?

16 A. Yes.

17 Q. All right. Are you familiar with a product known as  
18 glucosamine and chondroitin?

19 A. Yes.

20 Q. And you want to tell the ladies and gentlemen of the jury  
21 what it is and what it's for?

22 A. Glucosamine and chondroitin sulfate are components of  
23 cartilage, and they are frequently used to treat arthritis and  
24 synovitis in horses. They can be administered by injection  
25 directly into the joint. There are some forms of it,



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Bowman - Cross

1 polysulfated glucosamine or glycans that can be injected  
2 intramuscularly or intravenously to --

3 Q. Now --

4 A. -- get that effect.

5 Q. I'm sorry, I didn't realize you weren't finished.

6 Now, it is most often administered to humans; isn't  
7 that correct?

8 A. I am not an expert on what humans get administered.

9 Q. Is it considered a drug or a non-drug product?

10 A. In humans, or in animals?

11 Q. Let's start with humans.

12 A. I'm not an expert in what it is considered in humans.

13 Q. With regard to animals, it is considered a drug; is it not  
14 correct?

15 A. Yes, it is.

16 Q. And it can be administered to an animal either by one of  
17 the means you described or by being ground up and placed in  
18 their food; isn't that correct?

19 A. Yes.

20 Q. There are separate regulations for seeking approval of a  
21 feed product, as opposed to a drug product under the FDA; am I  
22 correct?

23 A. There are -- drugs that are administered in animal feeds  
24 are still drugs. Some of the rules, as far as developing the  
25 application, are slightly different because of the different



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Bowman - Cross

1 dosage form, but if it's a drug administered in feed, it's a  
2 drug.

3 Q. Now, has a GRASE review ever been conducted on glucosamine  
4 and chondroitin to determine whether it is safe and effective  
5 for its intended use in animals?

6 A. Honestly, I have no idea. I would have to search the  
7 archives. I don't recall ever doing one myself.

8 Q. Isn't it a fact that as to chondroitin, if you know,  
9 chondroitin is on the list as a generally regarded as effective  
10 and safe substance --

11 MS. MORTAZAVI: Objection.

12 Q. -- but that glucosamine -- withdrawn -- yes, that  
13 glucosamine is not?

14 A. There is --

15 THE COURT: Hold on. The objection is sustained.

16 A. There is no generally --

17 THE COURT: No, no. When I sustain an objection, you  
18 don't answer.

19 THE WITNESS: Okay.

20 BY MR. SERCARZ:

21 Q. Do you know whether glucosamine has been subjected to a  
22 GRASE review?

23 A. Again, for horses or for people?

24 Q. For horses.

25 A. As far as I'm aware, I am unaware of it -- it wouldn't



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Bowman - Cross

1 be -- first of all, GRASE review is done of a product, not of  
2 an ingredient, and I don't think -- you're probably confusing a  
3 GRAS for food, which is generally recognized as safe for food,  
4 as opposed to generally recognized as safe and effective.

5 There's no list of products that are generally  
6 recognized as safe and effective; that simply doesn't exist.  
7 There is a list of ingredients that are generally recognized as  
8 safe for specific purposes in food.

9 Q. Is glucosamine generally recognized as safe and effective  
10 for food for animals?

11 MS. MORTAZAVI: Objection.

12 Q. Specifically to relieve joint pain in horses?

13 THE COURT: Sustained, specifically to the form of  
14 your question, Mr. Sercarz.

15 Q. Do you have any familiarity with the GRASE -- withdrawn.

16 Did you testify yesterday that when a drug consists of  
17 more than one active pharmaceutical ingredient, that GRASE  
18 reviews are done on all of the active pharmaceutical  
19 ingredients?

20 A. No, I did not.

21 Q. Now, again, you told us yesterday that the purpose of the  
22 FDA regime is to determine whether animal drugs are safe and  
23 effective for their intended use; am I correct? I'm not just  
24 talking about the work that you did. I'm talking about the FDA  
25 regulatory regime.



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Bowman - Cross

1 A. The FDA's mission is to ensure that the products marketed  
2 for animal use are safe and effective.

3 Q. All right. And you told us that in making that analysis,  
4 the intended use of the product is a paramount consideration;  
5 am I correct?

6 A. Yes.

7 Q. And that would be the intended use as described in the  
8 application before the FDA to seek approval of the product; am  
9 I correct?

10 A. For a product seeking approval, yes.

11 Q. Suppose that the proponent of a product has one intended  
12 use in mind, but the product can commonly be used for other  
13 purposes?

14 A. What's the question?

15 Q. Does that affect the judgment of the FDA as to whether or  
16 not to approve the drug?

17 A. Probably not. It could in some circumstances, but most  
18 likely not.

19 Q. Then if I may ask you a hypothetical question. What if a  
20 proposed product is offered for use in treating pain in  
21 animals, such as horses, but it can also commonly be used  
22 because it has a performance enhancing effect?

23 MS. MORTAZAVI: Objection, there's no question.

24 THE COURT: Sustained. There's no question there.

25 Q. How would that --



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Bowman - Cross

1 THE COURT: Go ahead.

2 Q. How would that affect the analysis by the FDA?

3 MS. MORTAZAVI: Objection, vague.

4 THE COURT: Are you able to answer, Dr. Bowman?

5 THE WITNESS: I can give some context.

6 THE COURT: Go ahead.

7 A. So approved animal drug products are allowed to be used in  
8 what's called off-label uses under the conditions set forth in  
9 21 CFR 530, and in 21 CFR 530, the only way that products can  
10 be used off label is if it's to alleviate animal suffering or  
11 prevent death. So performance enhancement would not meet the  
12 criteria established in 21 CFR 530 for off-label use.

13 Q. To be clear, I'm not asking about off-label usage. I'm  
14 asking about the product for seeking FDA approval of the drug  
15 in the first instance.

16 And again, my question is, if the proponent indicates  
17 that the intended use is to treat pain in an animal, but the  
18 FDA is aware that the product is capable of other uses, such as  
19 as a performance enhancing drug, will that affect the FDA's  
20 consideration of the approval of that product?

21 A. It could. It would be case by case.

22 Q. Would it be fair then to say that the FDA might approve of  
23 a drug based on the proponent's explanation of its intended use  
24 but that drug could still be used as a performance enhancing  
25 drug?



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Bowman - Cross

1 A. It couldn't be used as a performance enhancing drug  
2 legally. It would be illegal under the conditions in 21 CFR --

3 Q. It would be illegal under?

4 THE COURT: Let her finish.

5 Okay. Go ahead, Dr. Bowman.

6 A. You're describing an off-label use of an approved product.  
7 Off-label uses are regulated under 21 CFR 530, and a  
8 performance enhancing use would not fit under that use and  
9 would, therefore, be illegal.

10 Q. Now, in testifying about your background, you told us that  
11 you spent a great deal of time working with the FDA; am I  
12 correct?

13 A. Yes.

14 Q. And you also spent some time earlier in your career as a  
15 veterinarian, practicing with large animals; is that correct?

16 A. Yes, it is.

17 Q. From your experience as a veterinarian, you know that the  
18 FDA does not regulate the practice of veterinary medicine;  
19 isn't that correct?

20 A. That is correct.

21 Q. And the FDA is not the entity that regulates horseracing;  
22 is that correct?

23 A. That is correct.

24 Q. Those regulations are found in state and local regulatory  
25 regimes; am I right?



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Bowman - Cross

1 A. And there are some national organizations that provide the  
2 background for those state laws.

3 Q. With regard to the FDA regulations, you testified at some  
4 length about the approval process of an animal drug yesterday,  
5 correct?

6 A. Yes.

7 Q. At the end of the process, if a drug is approved, is it  
8 entitled to bear on its label any sort of an insignia or  
9 indication that the drug is FDA approved?

10 A. Yes. It's highly encouraged.

11 Q. Now, you mentioned among the other requirements for  
12 securing FDA approval, that there need to be studies regarding  
13 its effectiveness and safety; am I correct?

14 A. Yes.

15 Q. And that would include safety and efficacy among different  
16 animals; am I correct?

17 A. I don't know what you mean by different animals. It would  
18 be in the target species for the intended use.

19 Q. Fair enough. That the FDA inspects the facilities that are  
20 used to manufacture the products in order to ensure that they  
21 meet the requirements and are capable of manufacturing to FDA  
22 standards; am I correct?

23 A. Yes.

24 Q. The process for manufacturing the products must be listed  
25 with the FDA; am I correct?



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Bowman - Cross

1 A. Yes. All manufacturers of all drugs, whether they're  
2 approved or not, must be established and registered and their  
3 drugs listed with the FDA.

4 Q. There are separate labeling requirements, as you've  
5 described them to the ladies and gentlemen of the jury; am I  
6 correct?

7 A. Separate from what?

8 Q. I'll leave out the word "separate."

9 There are labeling requirements; am I correct?

10 A. There are labeling requirements for all marketed animal  
11 drugs, approved or not.

12 Q. All right. And they vary according to whether the drug is  
13 to be marketed as an over-the-counter drug or a prescription  
14 drug; am I correct?

15 A. Yes.

16 Q. With regard to prescription drugs, there are requirements  
17 for what must be listed on a leaflet and the label; am I  
18 correct?

19 A. Yes.

20 Q. All active pharmaceutical ingredients must be listed; am I  
21 correct?

22 A. For parenteral products, yes, all actives and inactives.  
23 For oral products, it's not always required that all the  
24 inactives be listed.

25 Q. If those requirements are met -- withdrawn.



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Bowman - Cross

1           If those requirements are not met, then the drug is  
2 deemed unsafe; am I correct?

3           MS. MORTAZAVI: Objection, vague.

4           THE COURT: No, if you're able to answer. If you're  
5 not, tell us.

6           A. I was going to ask you to repeat the question. I got lost  
7 in it a little bit.

8           Q. I'm sorry, may I have it reread.

9           (Record read)

10          A. If you're referring to the requirements of the ingredients  
11 that are required to be listed on the label depending on the  
12 formulation, then, yes, the product would be unsafe, it would  
13 be misbranded, and I think by -- I'm not an expert on all the  
14 parts of the Act, but I think it would also be unsafe.

15          Q. Now, with regard to the FDA regulatory regime, there are  
16 requirements for what veterinarians are permitted to do with  
17 regard to products; am I correct?

18          A. Yes.

19          Q. I'm sorry?

20          A. Yes.

21          Q. All right. Veterinarians may be subject to different  
22 regulations than other proponents when it comes, for example,  
23 to off-label usage, as you've just described it; am I correct?

24          MS. MORTAZAVI: Objection.

25          THE COURT: Are you able to answer? The question is



M1QPFIS1

Bowman - Cross

1 vague.

2 A. I'm not sure what you're asking.

3 Q. Are there circumstances under which a veterinarian can use  
4 a drug for a purpose other than the one for which the drug was  
5 proposed and received FDA approval?

6 A. Yes. As we talked about, under 21 CFR 530, a veterinarian  
7 in a valid veterinarian client/patient relationship, is  
8 permitted to use drugs off label for uses beyond the -- besides  
9 what's the intended use on the official labeling, if it is  
10 going to alleviate animal suffering or prevent death.

11 Q. Are there circumstances under which a veterinarian is  
12 permitted to compound drugs without seeking FDA approval of the  
13 newly formulated drug?

14 A. There are.

15 Q. In order to understand who qualifies as a veterinarian, one  
16 must examine state statutes in order to determine whether the  
17 veterinarian is considered to be legitimately engaged in the  
18 practice of veterinary medicine; am I correct?

19 A. I'm not an expert on the state laws. I assume so.

20 Q. Are you familiar with something called the AVMA model code  
21 for veterinary practice?

22 A. Generally, not specifically.

23 Q. But in order to make a judgment about whether or not a  
24 particular substance comports with FDA requirements, one -- not  
25 necessarily you, but one -- may have to be familiar with state



M1QPFIS1

Bowman - Cross

1 regulations regarding the practice of veterinary medicine;  
2 isn't that correct?

3 A. Yes, in all the states you practice in.

4 Q. And in order to make the determination whether a product  
5 approved by the FDA can be administered to a horse without  
6 violating racing regulations, one needs to be conversant with  
7 those racing regulations in addition to FDA requirements; isn't  
8 that correct?

9 A. One always needs to be conversant with the state  
10 regulations; however, if it's in violation of 21 CFR 530, it's  
11 still in violation regardless of what the state says or thinks.

12 Q. In other words, a substance can be -- a product can fail to  
13 meet the approval of the FDA and yet, it may not be outlawed by  
14 local or state racing regulations; isn't that correct?

15 A. I am not aware of any situations that fit that.

16 Q. I asked whether that is correct as a matter of statutory  
17 interpretation?

18 MS. MORTAZAVI: Objection, vague.

19 THE COURT: Sustained. She answered your question.  
20 Now you're just arguing.

21 MR. SERCARZ: May I have one moment, your Honor?

22 THE COURT: Sure.

23 (Pause)

24 BY MR. SERCARZ:

25 Q. Now, with regard to the labels that you observed yesterday,



M1QPFIS1

Bowman - Cross

1 none of them bore the legend "FDA approved"; am I correct?

2 A. Yes. That's not a terminology that we put on the labels  
3 typically.

4 Q. Regardless of what you may have put on the label, the  
5 labels that you observed did not bear the legend "FDA  
6 approved"; isn't that correct?

7 A. That is correct.

8 Q. You mentioned, in discussing the process of seeking FDA  
9 approval, that you have a sit-down, I believe were your words,  
10 with the proponent of the product to discuss the process; am I  
11 correct?

12 A. Generally, unless they choose not to avail themselves of  
13 that.

14 Q. You did not have any such sit-down with my client,  
15 Dr. Fishman; am I correct?

16 A. I could find no evidence that we've ever had a meeting with  
17 Dr. Fishman.

18 Q. In other words, there's no record that Dr. Fishman ever  
19 sought FDA approval for any product; is that correct?

20 A. Yes.

21 Q. Then am I correct that Dr. Fishman made no representation  
22 to the FDA regarding the ingredients contained in any of his  
23 products, correct?

24 A. Not that I'm aware of.

25 Q. He made no representation regarding the manufacturing



M1QPFIS1

Bowman - Cross

1 products -- manufacturing process; am I correct?

2 A. Direct to FDA? No.

3 Q. He made no representation to the FDA regarding the  
4 ingredients in any of his products; am I correct?

5 A. Yes.

6 Q. Sorry?

7 A. Yes.

8 Q. He made no representation that the labels that you observed  
9 were in compliance with FDA requirements in order for approval  
10 of the drugs; am I correct?

11 A. You are correct, but those labels still need to be in  
12 compliance whether the drug is approved or not approved. In  
13 order to be legally marketed --

14 MR. SERCARZ: Move to strike, your Honor. That's not  
15 an answer to my question.

16 THE COURT: Hold on.

17 (Pause)

18 Yes, Dr. Bowman, you need to just answer the question  
19 that's asked.

20 A. Yes.

21 MR. SERCARZ: May I have the question reread, your  
22 Honor?

23 (Record read)

24 A. Yes.

25 Q. Indeed, would it be fair to say that the labels that you



M1QPFIS1

Bowman - Cross

1 observed yesterday in your examination didn't even come close  
2 to the requirements for FDA approval?

3 A. That is correct.

4 (Continued on next page)

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M1QTFIS2

Bowman - Cross

1 MR. SERCARZ: May I have one moment?

2 THE COURT: Sure.

3 (Pause)

4 BY MR. SERCARZ:

5 Q. You testified yesterday regarding 21 CFR Section 530 and  
6 the extra label drug use when it comes to non-food animals, am  
7 I correct?

8 THE COURT: When it comes to what, non-animals?

9 MR. SERCARZ: Non-food producing animals.

10 THE COURT: Thank you.

11 A. We mentioned it.

12 Q. And can you remind the ladies and gentlemen of the jury of  
13 the requirements and the guidance of 21 CFR Section 530, Sub  
14 30, in that regard?

15 A. 21 CFR 530.30?

16 Q. Yes.

17 A. I'm sorry, I don't have it memorized. Do you want to read  
18 it?

19 Q. Didn't you testify yesterday in general terms that in order  
20 to be permitted to use -- engage in extra label or off-label  
21 use of an approved product that the animal has to be in serious  
22 danger, that it has to be a matter of life and death for the  
23 animal?

24 A. It has to be used to relieve pain and suffering or to  
25 prevent the death of the animal.



M1QTFIS2

Bowman - Cross

1 Q. Can you tell me where in Section 530 of the CFR it limits  
2 the off-label use of these products to situations involving  
3 life and death?

4 A. It's written in there in plain language, I can't -- I don't  
5 have the whole section memorized.

6 Q. But you agree that any time that it is necessary to prevent  
7 pain and suffering it may be used, am I correct?

8 A. There are also limitations on there on whether you've  
9 already exhausted the approved uses for products that are  
10 already approved for the particular use that you seek.

11 Q. Isn't it correct that a veterinarian has the discretion to  
12 prescribe for off label use?

13 A. That discretion is there. It's under caution that it  
14 should be limited to situations where the drugs approved for  
15 those uses are unavailable or have failed to work.

16 Q. May I ask you this, in light of all of the requirements  
17 that are necessary, in order to get a new drug approved by the  
18 FDA, are you aware of any information regarding the average  
19 cost of bringing a new drug to market?

20 A. I don't have that information at my fingertips today, no.

21 Q. I'm sorry?

22 A. I don't have that information at my -- in my mind today,  
23 no, I would have to check with the management at CVM to get  
24 that number.

25 Q. Isn't it correct that one of the reasons that compounding



M1QTFIS2

Bowman - Cross

1 by veterinarians is permitted is that the expense of treating  
2 an animal with newly approved drugs can be -- withdrawn, that  
3 the process of bringing a new drug to market is terribly  
4 expensive?

5 MS. MORTAZAVI: Objection.

6 THE COURT: You have to rephrase your question. You  
7 withdrew it and then didn't ask a full question.

8 Q. Are you aware of the reason that Section 530 permits  
9 compounding of drugs by a veterinarian?

10 MS. MORTAZAVI: Objection, outside the scope.

11 MR. SERCARZ: Sorry, I didn't hear the answer.

12 THE COURT: We have an objection, Mr. Sercarz, just  
13 give me a moment.

14 (Pause)

15 THE COURT: No, I think it's fair. You can answer,  
16 Dr. Bowman, if you're able.

17 A. Generally compounding for animal drugs is allowed because  
18 there's such a wide disparity in the sizes and types of animals  
19 that veterinarians need to treat. So the approved products may  
20 not be available in an appropriate strength and dosage form to  
21 treat, for example, a canary, and the veterinarian might need  
22 to take what is available, which might be approved for a dog or  
23 a horse, and create a dosage form that would be appropriate for  
24 the canary. And having that flexibility built into the law  
25 allows veterinarians to treat everything that they see, from



1 hamsters to horses, and in between.

2 Q. It is not an uncommon event, therefore, for a veterinarian  
3 to compound drugs during the course of his or her veterinarian  
4 practice in treating an animal, am I correct?

5 A. I think it's not unusual to have a veterinarian have a  
6 compounding pharmacy compound a drug specifically for a patient  
7 because the dosage form or strength doesn't exist in an  
8 approved form. I don't think that many veterinarians do the  
9 compounding in-house except for very simple solutions. That's  
10 my personal opinion. I have not seen that, in practice, it's  
11 that common. And in fact, veterinarians take a great risk when  
12 they do compounding in-house. It's much safer for the  
13 veterinarian and his practice to have a professional  
14 compounding pharmacy make that product and take that risk.

15 Q. And it is appropriate for a veterinarian to seek  
16 compounding from a professional pharmacy in order to alleviate  
17 suffering in animals, isn't that correct?

18 A. On a patient-by-patient basis.

19 Q. Incidentally, in defining the term "patient," one need also  
20 look to local and state regulations, isn't that correct?

21 A. I only know one definition for the term "patient."

22 MR. SERCARZ: Thank you very much.

23 THE COURT: Are you concluded, Mr. Sercarz?

24 MR. SERCARZ: I'm sorry, your Honor?

25 THE COURT: Are you concluded?



M1QTFIS2

Bowman - Cross

1 MR. SERCARZ: May I have one moment, your Honor?

2 THE COURT: Yes.

3 (Pause)

4 MR. SERCARZ: Forgive me, just to go over two things.

5 I apologize, your Honor. Thank you, your Honor, for the  
6 opportunity.

7 BY MR. SERCARZ:

8 Q. Am I correct that the FDA regulatory regime contains an  
9 exemption from the registration requirement under certain  
10 circumstances?

11 A. No, not that I'm aware of, none.

12 Q. Doesn't 21, United States Code, Section 360(g)(2) contain  
13 an exemption from the registration requirement for  
14 practitioners licensed by law to prescribe drugs manufactured,  
15 prepared, or processed solely for use in the course of their  
16 professional practice?

17 A. That is in the human drug section. I would need to look at  
18 that more carefully to see if it even applies. Veterinarians  
19 don't have to register or list products that they compound in  
20 the course of their practice for individual patients. That's  
21 not the same thing as manufacturing. And the animal side of  
22 FDA has not -- on the human side they have started like  
23 separate category of compounding pharmacies. That has not been  
24 something that the animal side has gone with.

25 Q. Am I correct that there is an exception to the misbranding



M1QTFIS2

Bowman - Cross

1 or labeling requirements for animal drugs dispensed by or upon  
2 a veterinarian's lawful written or oral order in the course of  
3 their professional practice?

4 A. That's true.

5 There are still requirements --

6 Q. You have answered my question.

7 THE COURT: You have answered the question, Doctor.

8 A. There are still requirements --

9 THE COURT: You have answered the question.

10 THE WITNESS: Okay.

11 Q. Am I correct -- I believe we have been over this, but am I  
12 correct that Section 21, United States Code, Section 360(b),  
13 (a), 4 and 5 provide an exemption from adulteration for extra  
14 label usage of FDA approved drugs by or on the lawful written  
15 or oral order of a licensed veterinarian within the context of  
16 a veterinarian-client-patient relationship?

17 MS. MORTAZAVI: Objection, asked and answered.

18 THE COURT: I'll allow it.

19 A. You quoted which section, 300 something?

20 Q. I'm sorry, but I'm not allowed to respond to your  
21 questions. If necessary I will have it reread, and if you  
22 can't answer it I will try to refine my question.

23 A. Section 300 is all about human drugs, not veterinary drugs.

24 Q. Are you saying then that 21, United States Code, Section  
25 360(b), (a) within (4) does not contain within it reference to



M1QTFIS2

Bowman - Cross

1 veterinarians in the course of their relationship with the  
2 animal?

3 A. I don't have all of Section 300 memorized. Could you read  
4 it?

5 Q. Well, let me do it this way, are you saying there is no  
6 exemption in the regulatory regime from the adulteration  
7 requirements when it comes to extra label usage of FDA approved  
8 drugs by or on the lawful written or oral order of a licensed  
9 veterinarian within the context of a VCPR?

10 A. I'm unfamiliar with that part of the statute. I don't know  
11 why that would fall under adulteration.

12 MR. SERCARZ: Thank you very much.

13 Thank you, your Honor.

14 MR. FERNICH: Before he rests, may I have one word?

15 MR. SERCARZ: Let it go.

16 THE COURT: He rested twice now.

17 MR. SERCARZ: Let it go.

18 BY MR. SERCARZ:

19 Q. In connection --

20 MR. SERCARZ: One more question?

21 Thank you, your Honor.

22 BY MR. SERCARZ:

23 Q. In connection with your testimony today, did you consult  
24 the FDA website?

25 A. Today?



M1QTFIS2

Bowman - Redirect

1 Q. In connection with your testimony in this courtroom  
2 yesterday and today, in preparation for your testimony, did you  
3 consult the FDA website?

4 A. Yes.

5 Q. And did you find no information regarding the exemption  
6 from the adulteration requirements that applies to  
7 veterinarians?

8 A. I haven't had any mention, in my review or in any of the  
9 reviews about whether these drugs are adulterated, I did not  
10 review the adulteration sections in the human side of the drug  
11 regulations in 21 CFR 300.

12 MR. SERCARZ: Thank you.

13 THE COURT: Ms. Mortazavi, do you have redirect?

14 MS. MORTAZAVI: I do, your Honor.

15 REDIRECT EXAMINATION

16 BY MS. MORTAZAVI:

17 Q. Dr. Bowman, good morning.

18 A. Good morning.

19 Q. I want to ask you just a few questions regarding what you  
20 just testified about while you were being questioned by  
21 Mr. Sercarz.

22 In particular, you were asked a few questions about  
23 compounding drugs. Do you recall that?

24 A. Yes.

25 Q. Can you just explain what compounding a drug is?



M1QTFIS2

Bowman - Redirect

1 A. When someone compounds a drug they're creating a dosage  
2 form usually that is different in some way from the approved  
3 and available dosage forms. It could be different in that it  
4 has different active ingredients than any that are available in  
5 an approved dosage form, or it could be a different  
6 concentration or a different strength. It could be that the  
7 approved dosage form is it only available in an injection and  
8 you need an oral liquid, or perhaps it's only available in a  
9 tablet and you have an animal that you can't get tablets into  
10 or it would take too many tablets, therefore, you need it made  
11 in a different dosage form that would be more useful in the  
12 patient that you're talking about.

13 Q. Dr. Bowman, you mentioned the compounding would be  
14 something that occurs on a patient-by-patient basis. Do you  
15 recall that?

16 A. Yes.

17 Q. What did you mean by that?

18 A. I mean that in the course of examining and diagnosing an  
19 animal, if you determine that it needs a particular drug and  
20 that drug is not readily available in an approved dosage form  
21 and strength that would be appropriate for that patient because  
22 of its size or because of the client's inability to administer  
23 certain dosage forms to certain animals, then you might request  
24 that a special drug be compounded for that animal.

25 Q. Would that mean that a veterinarian would first have to



M1QTFIS2

Bowman - Redirect

1 make a diagnosis then issue a prescription or compound the drug  
2 himself?

3 A. Yes.

4 Q. And you were also asked about off-label usage for drugs.  
5 Do you recall that?

6 A. Yes.

7 Q. And can you just remind the jury your testimony regarding  
8 off-label usage and under what circumstances that is permitted?

9 A. So off-label use is the use of approved animal drugs in a  
10 manner different than their labeling. So if an approved animal  
11 drug, maybe an antibiotic, is approved for use to treat urinary  
12 infections in dogs, however, there's a lot of data out there  
13 that shows that same antibiotic may be useful for other  
14 infections so you will give it to a dog for a different type of  
15 infection, that's an off-label use, and that's permitted under  
16 21 CFR 530 as long as certain conditions are met: You're  
17 within that veterinarian-client-patient relationship, you have  
18 made a determination that other drugs that are available that  
19 might be approved for use to treat the specific infection this  
20 animal has, that you believe that because of that patient that  
21 drug is unlikely to be successful, maybe that patient has  
22 kidney failure and it can't tolerate the drug that is approved  
23 because that drug is metabolized by the kidneys, whatever those  
24 reasons are, you made a determination and you document that  
25 determination in the animal's medical record so that it's



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Bowman - Redirect

1 documented why you chose to use the drug off label rather than  
2 use the approved products.

3 Q. So in other words, Dr. Bowman, is off-label usage of an  
4 approved drug also a determination that occurs on a  
5 patient-by-patient basis?

6 A. Yes.

7 MR. SERCARZ: Objection, leading. It's redirect.

8 THE COURT: Yes, that's fair. Sustained.

9 Q. Dr. Bowman, if a drug is compounded for one patient, can it  
10 then be given to a second, third or fourth patient?

11 A. Not properly, no.

12 Q. Now you were also asked, Dr. Bowman, whether a veterinarian  
13 can dispense a drug off label if it's done in the course of  
14 their professional practice. Do you recall being asked that  
15 question?

16 A. Yes.

17 Q. And I believe you wanted to expand upon your answer. Do  
18 you recall testifying that there are still limits to that  
19 principle?

20 A. Exactly.

21 Q. Can you explain?

22 A. So under 21 CFR 530, there are limits, practical limits to  
23 the ability of veterinarians to use drugs off label. There's  
24 actually a prohibited list. Certain drugs are prohibited from  
25 off label use, generally in food animals, although that may be



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Bowman - Redirect

1 expanded to other species of animals if necessary. There's a  
2 place in the regulations for that. And it's limited to use to  
3 treat a serious disease, to limit animal suffering or prevent  
4 death. It's not intended to be used for -- to change the color  
5 of Fluffy's coat or some use that might be technically a drug  
6 use but would not benefit the patient.

7 Q. Dr. Bowman, you were also asked about searches that you had  
8 done of FDA databases regarding any contact between the FDA and  
9 Seth Fishman, the defendant. Do you recall those questions?

10 A. Yes.

11 Q. And do you recall your testimony that there was no record  
12 that Seth Fishman had ever tried to get his drugs approved by  
13 the FDA?

14 A. Yes. There's no record that there was any official contact  
15 even a general correspondence.

16 Q. All right. And by official contact, you mean in the  
17 context of submitting an application for approved -- or pardon  
18 me, for a new animal drug?

19 A. Well, even before you get to the stage where you're  
20 submitting an application, there's generally a general  
21 correspondence where people will write in and ask for  
22 information or send an email. There's even -- we have I guess  
23 a web address where it calls to ask CVM. So if someone were to  
24 ask a question that says I'm interested in learning about the  
25 drug approval process, how do I get started, then even that



M1QTFIS2

Bowman - Redirect

1 would get transferred to the appropriate division within the  
2 Office of New Animal Drug Evaluation and they would set up a  
3 general correspondence with that person.

4 Q. Now Dr. Bowman, are you familiar with the enforcement  
5 division side of FDA CVM?

6 MR. SERCARZ: Objection. I would like to be heard.

7 THE COURT: I will see you and Ms. Mortazavi at the  
8 sidebar.

9 (Continued on next page)



M1QTFIS2

Bowman - Redirect

1 (At sidebar)

2 MR. SERCARZ: I object on the grounds that this line  
3 of questioning is beyond the scope of the cross.

4 THE COURT: No, it isn't. You asked --

5 MR. SERCARZ: May I be heard?

6 THE COURT: Let me finish. You asked: Did you search  
7 the FDA websites in connection with your testimony? Didn't  
8 you?

9 MR. SERCARZ: It was narrower than that.

10 THE COURT: No, that's the exact question, I believe.

11 MR. SERCARZ: Your Honor --

12 THE COURT: First you said in connection with your  
13 testimony today, and then you broadened it and said yesterday  
14 or today. You opened the door.

15 MR. SERCARZ: My recollection is -- and if the Court  
16 is correct -- the import of my questions was, and it is clear  
17 that this line of questioning is with regard to the absence of  
18 any representations my client made regarding labeling, safety  
19 efficacy or anything of that nature.

20 THE COURT: Your question was not so limited.

21 Ms. Mortazavi, let me let you make your record.

22 MR. SERCARZ: I don't it have in front of me and I  
23 don't have a photographic memory, but that was the import of my  
24 questioning.

25 THE COURT: It may have been what you intended,



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Bowman - Redirect

1 Mr. Sercarz, but it's not the words that you used.

2 MR. SERCARZ: I have my objection. It's beyond the  
3 scope of cross-examination.

4 MS. MORTAZAVI: Your Honor, for the record, I recall  
5 that the question posed by Mr. Sercarz were general questions,  
6 not limited to any database, simply contact with the FDA. I  
7 think it's fair to explore which division of the FDA Dr. Bowman  
8 referenced when answering those questions.

9 MR. SERCARZ: Your Honor, the introduction -- my  
10 recollection, the introduction to those questions is: You did  
11 not have the sit down that you described --

12 THE COURT: Right.

13 MR. SERCARZ: -- and he did not go through the  
14 approval process with you.

15 And then my next line of questioning was: Therefore,  
16 he made no representations regarding -- and I gave her the  
17 litany. The scope of the questions was clear.

18 THE COURT: And then Mr. Fernich came up and you said  
19 one more, and you asked as I believe your final -- you said  
20 one, but it was two questions --

21 MR. SERCARZ: It was.

22 THE COURT: -- did you search any database?

23 Mr. McDaniel, are you able to go back and find that  
24 final question or two.

25 COURT REPORTER: Yes, your Honor.



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Bowman - Redirect

1 THE COURT: Do you have realtime?

2 MR. SERCARZ: No.

3 (Record read)

4 MR. SERCARZ: Those were the questions.

5 THE COURT: Yes, those were the questions. You said:  
6 Did you consult the website? She's entitled to follow up on  
7 that. You put no limitation.

8 MR. SERCARZ: With all due respect, I didn't put a  
9 limitation on the first question because I needed to get a yes  
10 or no answer in order to determine whether or not she consulted  
11 the one site on the issue of 530 CFR. There's no other way to  
12 ask it. Had I asked it all in one, there would have been an  
13 objection that it's a compound question and I would have had to  
14 break it down.

15 THE COURT: Wrong. You could have asked: Did you  
16 consult the website to see whether he applied in connection  
17 with whatever CFR provision you wanted to ask about. That's  
18 not what you asked.

19 The objection is overruled.

20 Before we go back, I want to break with the jury at  
21 11, so you should plan accordingly.

22 MS. MORTAZAVI: It's 10:45, your Honor?

23 THE COURT: Roughly. I have a hard time seeing the  
24 clock.

25 MS. MORTAZAVI: Very good.



M1QTFIS2

Bowman - Redirect

1 (In open court)

2 MS. MORTAZAVI: If we could have the court reporter  
3 read back the question.

4 (Record read)

5 A. Yes.

6 BY MS. MORTAZAVI:

7 Q. What is the enforcement side of the FDA CVM tasked with?

8 MR. SERCARZ: Objection, beyond the scope, as to that  
9 question.

10 THE COURT: Sustained.

11 MS. MORTAZAVI: Your Honor, I'm laying the foundation  
12 for my next question.

13 THE COURT: Ask your next question.

14 Q. Dr. Bowman, did you consult the databases of the  
15 enforcement division of FDA CVM in connection with your  
16 testimony?

17 A. I'm not sure what you mean. We searched the export and  
18 import -- the export certificate databases.

19 Q. So why don't you tell us, Dr. Bowman, which databases you  
20 consulted in preparation for your testimony today regarding  
21 whether Dr. Seth Fishman had any contact with the FDA.

22 A. I searched the STARS database, which is our internal  
23 tracking system for all the preapproval contacts with firms and  
24 companies. And I do that as broadly as I can to make sure that  
25 nothing gets missed, because typically drugs in the preapproval



M1QTFIS2

Bowman - Redirect

1 section don't have trade names yet, and since I didn't have  
2 ingredients for all the products, it made it a challenge. So I  
3 did search by trade name, I searched by company names, all the  
4 company names that I was provided, and I searched by active  
5 ingredients such as I had from the labels, and found nothing.

6 Q. When you testified you stated, if you recall, that there  
7 had been no record of any email communication with Dr. Fishman  
8 separate and apart from any new animal drug application that  
9 had been submitted, is that correct?

10 A. Those records include all types of communication that are  
11 considered kind of official communication. It wouldn't include  
12 an unofficial phone call, if there was a random phone call to a  
13 reviewer, which could happen because all of our phone numbers  
14 are publicly available, that wouldn't necessarily get archived.  
15 However, it would include all general correspondence, which  
16 could be as simple as an email requesting information, or  
17 direct communication by email would often get our general  
18 correspondence number, especially if there was any expectation  
19 that there would be a next step taken or that company or that  
20 individual would be interested in coming in and having a  
21 meeting or a sit down to discuss how a drug gets approved and  
22 what the next steps would be if they're interested in seeking  
23 an approval.

24 Q. That STARS database that you described, does that contain  
25 all of the email records of every employee of the FDA CVM?



M1QTFIS2

Bowman - Redirect

1 A. No.

2 Q. Does that contain all of the phone records of everybody at  
3 the FDA CVM?

4 A. No.

5 Q. Does that contain all of the records of warning letters  
6 that the FDA CVM has issued?

7 A. No, because it's --

8 MR. SERCARZ: Move to strike, leading.

9 THE COURT: You don't strike because of leading. You  
10 can object, but --

11 MR. SERCARZ: I object to the question.

12 THE COURT: But no, that's not leading. She can  
13 answer yes or not. It's not leading.

14 Q. Dr. Bowman, to the extent it was unclear, I asked if that  
15 database that you described contains FDA CVM warning letters  
16 that have been issued.

17 A. No, it doesn't, because it's all preapproval.

18 And for the record, I did not search --

19 THE COURT: There's no question pending, Dr. Bowman.

20 THE WITNESS: Okay.

21 Q. Thank you, Dr. Bowman.

22 Now do you recall being asked about a veterinarian  
23 issuing prescriptions in the course of his or her professional  
24 practice?

25 A. Yes.



M1QTFIS2

Bowman - Redirect

1 Q. Do you recall testifying yesterday about the steps that a  
2 veterinarian would typically take before issuing a  
3 prescription?

4 A. Yes.

5 Q. Does a veterinarian typically issue a prescription for  
6 hundreds or thousands of drugs at a time?

7 A. No.

8 Q. Does a veterinarian typically issue a prescription without  
9 knowing which animal is receiving the product?

10 A. No.

11 Q. And you also testified, Dr. Bowman, that if an ingredient  
12 list is not present on the label of a drug it would be  
13 considered unsafe, is that accurate?

14 A. I don't recall using that exact term, but yes, that would  
15 be unsafe and it would be misbranded, the product is  
16 misbranded.

17 Q. Why would it be considered unsafe?

18 A. It's unsafe because --

19 MR. SERCARZ: Objection.

20 THE COURT: Grounds?

21 MR. SERCARZ: Beyond the scope.

22 THE COURT: Overruled.

23 A. If you don't have the ingredient list, then you can't avoid  
24 products with ingredients that may be allergens to a particular  
25 patient. For the same reasons that ingredients have to be



M1QTFIS2

Bowman - Redirect

1 listed on human drug labels, they also have to be listed on  
2 animal drug labels.

3 Q. You were also asked about your review of the labels of  
4 certain products in connection with your testimony today. Do  
5 you recall that?

6 A. Yes.

7 Q. I believe you were asked about whether you had actually  
8 held those products in your hand. Do you remember that?

9 A. Yes.

10 Q. And do you recall being asked whether you conducted any  
11 tests of those products to see what the actual chemical  
12 substance was? Do you recall those questions?

13 A. I do.

14 Q. Is it necessary to test a drug in order for you to reach  
15 your conclusions?

16 A. No. In fact, I can't recall a situation where I ever had  
17 that information.

18 Q. Why is that?

19 A. First of all, we don't test drugs within CVM, that's not  
20 part of what we do. If the drug needs to be tested, if, for  
21 example, there's adverse events associated with an unapproved  
22 drug and we're concerned that it's contaminated, that has to be  
23 sent to an official FDA lab for evaluation. We don't do that  
24 in-house in CVM.

25 And for the purposes of the GRASE analysis, we are



M1QTFIS2

Bowman - Redirect

1 looking at the intended use as described in the product  
2 labeling. And searching the publish the literature, I  
3 typically use PubMed, sometimes also use Embase, which are huge  
4 databases that encompass journals and literature from thousands  
5 of sources. And we're searching for information on that  
6 specific drug product, not just the active ingredient, although  
7 if I know the active ingredients I can search for broadly in  
8 case the trade name is mentioned in passing, but wasn't a key  
9 word.

10 Q. Dr. Bowman, just to remind the jurors, your GRASE analysis  
11 is an analysis whether something is generally recognized as  
12 safe and effective, correct?

13 A. Correct.

14 Q. So even if a drug was effective, it may not be safe, is  
15 that fair to say?

16 A. Yes.

17 Q. Even if the ingredients on a drug were accurate, it may  
18 still not be generally recognized as safe and effective, is  
19 that right?

20 A. Absolutely.

21 Q. Can testing tell whether a drug actually does what it says  
22 it will if the ingredients are not listed?

23 A. No.

24 MS. MORTAZAVI: Ms. Jung, please pull up Government  
25 Exhibits 1018, 1028 and 1025, which are all in evidence. And



M1QTFIS2

Bowman - Redirect

1 for the record, these are electronic extractions from an  
2 electronic device seized from Seth Fishman's residence.

3 THE COURT: A few of the screens are not working, so  
4 why don't we pause for a moment.

5 (Pause)

6 THE COURT: Is everyone okay?

7 All right. Thank you.

8 MS. MORTAZAVI: Ms. Jung, if we could focus on the  
9 labels on each of those exhibits so it's more legible.

10 BY MS. MORTAZAVI:

11 Q. Dr. Bowman, could you read the ingredients on this label?

12 A. Ingredients: Proprietary blend of complex amino acid  
13 structures.

14 Q. Dr. Bowman, can you tell from that description what's in  
15 this drug?

16 A. No.

17 MS. MORTAZAVI: Ms. Jung, if you could take that down  
18 and please focus on Government Exhibit 1028.

19 Q. Dr. Bowman, can you read the ingredients on this label?

20 A. Ingredients: Proprietary blend of amino acids.

21 Q. Can you tell what is contained in this drug from that list?

22 A. No.

23 MS. MORTAZAVI: Ms. Jung, please take that down and  
24 turn to Government Exhibit 1025.

25 Q. If you could read the ingredients there.



M1QTFIS2

Bowman - Redirect

1 A. Ingredients: MSM 2 grams, DMG 1 gram, 1.25 grams  
2 proprietary amino acids and sugars.

3 Q. Dr. Bowman, you read out amino acids, could you read  
4 precisely what is on this exhibit?

5 A. If actually says proprietary AAs and sugars.

6 Q. Assuming it does reference amino acids as you originally  
7 read, does this tell you the chemical components of this  
8 particular drug?

9 A. It tells us some of the chemical components but not all.

10 Q. You were also asked, Dr. Bowman, about whether a GRASE  
11 analysis is focused on the individual ingredients or on the  
12 drug as a whole. Do you recall those questions?

13 A. Yes.

14 Q. Is it sufficient if one ingredient is generally recognized  
15 as safe and effective in a drug that has many ingredients?

16 A. No.

17 Q. Why is that?

18 A. Partly because you don't know which -- for example, there's  
19 an intended use for this product and you don't know how much of  
20 that intended use is fulfilled by each ingredient. These are  
21 presumably only the active ingredients that are listed here, so  
22 they're all considered active. So it's a proprietary blend,  
23 the entire product, and so it's a product evaluation, not  
24 ingredient by ingredient.

25 MS. MORTAZAVI: Thank you. And Ms. Jung, you can take



M1QTFIS2

Bowman - Redirect

1 down these exhibits.

2 Q. Dr. Bowman, do you recall being asked questions about  
3 Glucosamine and Chondroitin?

4 A. Yes.

5 Q. Do you recall being told by Mr. Sercarz and I believe you  
6 testified that it treats arthritis in horses, is that right?

7 A. That's one of its uses, yes.

8 Q. Do you recall being informed that it can be ground up into  
9 a powder and mixed in with feed?

10 A. Yes.

11 Q. Can a drug be both oral and injectable?

12 A. Yes.

13 Q. So in other words, even if something is a paste that a  
14 horse would eat, that could still be considered a drug,  
15 correct?

16 A. Oh, yes. Even a powder within feed can be a drug.

17 Q. What determines whether or not it's a drug?

18 A. Whether or not it's a drug is determined by whether it  
19 meets the definition of a drug found in the act.

20 Q. And if a veterinarian wanted to take one form of drug, say  
21 something in a powder form, and turn it into a paste, would  
22 that count as compounding?

23 A. Yes.

24 Q. And would that also require a veterinarian prescription?

25 A. Yes, unless the veterinarian was doing it to dispense



M1QTFIS2

1 directly to the client. Typically, in practice, you don't  
2 write a prescription for a drug that you are providing directly  
3 to the client for the patient that you treat.

4 Q. So let me ask the question a different way. Would there  
5 have to be a diagnosis made before a product is compounded and  
6 either given by a veterinarian or a prescription delivered by a  
7 veterinarian?

8 A. Yes.

9 THE COURT: Ms. Mortazavi, could you find a convenient  
10 breaking point?

11 MS. MORTAZAVI: Your Honor, if I could display one  
12 more exhibit I think I'll be able to conclude.

13 THE COURT: Sure.

14 MS. MORTAZAVI: Ms. Jung, could we please pull up  
15 Government Exhibit 106ET, and I will direct the jurors to their  
16 transcript binders to the tab 106ET. I will have Ms. Jung  
17 prepare Government Exhibit 106E.

18 THE COURT: Anybody need more time?

19 MS. MORTAZAVI: Ms. Jung, please play Government  
20 Exhibit 106E.

21 (Audio recording played)

22 MS. MORTAZAVI: Thank you, your Honor, no further  
23 questions.

24 THE COURT: All right. We'll take our morning break  
25 now. If you could try to be ready to be back down here in 15



M1QTFIS2

1 minutes, I would really appreciate it. You can leave your  
2 binders and notebooks there. And I just remind you that when  
3 we do take breaks, please don't discuss the case. You  
4 shouldn't form any judgments about the case until the  
5 conclusion of all of the evidence and your deliberations begin.  
6 Thank you.

7 Dr. Bowman, you remain under oath.

8 (Jury not present)

9 THE COURT: I'll see everyone slightly before 11:15.

10 (Recess taken)

11 MR. ADAMS: Your Honor, I'm passing up a binder for  
12 the next witness for ease of reference. This is everything but  
13 transcripts in the transcript binder.

14 THE COURT: Okay, thank you.

15 (Continued on next page)



M1QTFIS2

Bowman - Recross

1 (Jury present)

2 THE COURT: Okay, Mr. Sercarz, recross?

3 MR. SERCARZ: Yes, your Honor, very briefly.

4 RECROSS EXAMINATION

5 BY MR. SERCARZ:

6 Q. Dr. Bowman, does the CVM website contain a disclaimer  
7 saying that the CVM does not regulate the practice of  
8 veterinarian medicine?

9 A. We do not regulate the practice of veterinarian medicine.

10 I can't say whether that's on the website.

11 Q. Does the website also say if you have a complaint about  
12 your veterinarian or questions about veterinarian standard of  
13 care, contact the veterinary medical board in your state?

14 A. Most likely it does.

15 Q. On my cross-examination I had asked you questions about CFR  
16 Section 530.30. It provides guidance to animal and human  
17 drugs, isn't that correct?

18 A. No.

19 Q. With regard to extra label usage, doesn't it say that --  
20 withdrawn?

21 MR. SERCARZ: Your Honor, may I approach the witness  
22 with something to see if it refreshes her recollection?

23 THE COURT: I would like to see what the something is.

24 THE WITNESS: I may have misunderstood your question.

25 THE COURT: There's no question pending.



M1QTFIS2

1 MS. MORTAZAVI: Your Honor, to the extent Mr. Sercarz  
2 is looking to to refresh her recollection, I object.

3 THE COURT: She hasn't had a failure of recollection,  
4 in the first instance, and second, I don't know what it is you  
5 want to give to her. So the objection is sustained.

6 BY MR. SERCARZ:

7 Q. Isn't it a fact that Section 530.30 speaks to both animal  
8 and human drugs and says that extra label usage is permitted  
9 unless it poses a threat to the public health?

10 MS. MORTAZAVI: Objection. Asked and answered.

11 THE COURT: Overruled.

12 A. So I misunderstood your question the first time. I'm  
13 sorry. Section 530 does talk about the extra label use of  
14 human drugs in animals, not extra label use of animal drugs in  
15 people. So I misunderstood your question as far as it does say  
16 that you can use human drugs extra labelly under the conditions  
17 that are stated there in the regulation.

18 Did I answer your question?

19 MR. SERCARZ: Thank you, no further questions.

20 THE COURT: Thank you.

21 MS. MORTAZAVI: Nothing further, your Honor.

22 THE COURT: All right. Dr. Bowman, you're excused  
23 with the thanks of the Court.

24 THE WITNESS: Thank you.

25 THE COURT: Have a good rest of the day. Thank you.



M1QTFIS2

1 The government's next witness?

2 MS. MORTAZAVI: Your Honor, prior to calling our next  
3 witness, we would like to enter some exhibits or publish some  
4 exhibits for the jury.

5 THE COURT: That's fine.

6 MS. MORTAZAVI: While our witness is leaving the  
7 courtroom, I will just ask the jurors to retrieve their  
8 transcription binders. And I will ask them to turn to  
9 Government Exhibit 140D, as in dog, T, and I will have Ms. Jung  
10 pull up the same exhibits on the screen, as well as  
11 Exhibit 140D.

12 And for the record, this is a portion of an  
13 intercepted call taking place on June 5, 2019 between Seth  
14 Fishman and an unidentified female.

15 And the number again is 140DT in the jurors'  
16 transcription binders.

17 THE COURT: Okay.

18 MS. MORTAZAVI: Ms. Jung, please play Government  
19 Exhibit 140D.

20 (Audio recording played)

21 MS. MORTAZAVI: I would like to direct the jurors to  
22 tab 140FT in their binders and I will have Ms. Jung pull up  
23 140FT and 140F.

24 For the record, this is a portion of the same  
25 intercepted call on June 5, 2019.



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1 Ms. Jung, please play Government Exhibit 140F.

2 (Audio recording played)

3 (Continued on next page)

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M1QPFIS3

1 MS. MORTAZAVI: And I'll direct the jurors to tab  
2 910-T in their binders, and I'll have Ms. Jung pull up, please,  
3 Government Exhibit 910-T and Government Exhibit 910.

4 All right. It appears the jurors have all found their  
5 place in the binders; so, Ms. Jung, if you could play  
6 Government Exhibit 910.

7 (Audio recording played)

8 And for the record, that was a recording that was  
9 retrieved from an iPad seized from Seth Fishman.

10 Ms. Jung, if you could please pull up Government  
11 Exhibit 912-A.

12 And for the record, this is also a recording that was  
13 retrieved from the iPad seized from Seth Fishman.

14 And, Ms. Jung, if you could please play this exhibit.

15 (Audio recording played)

16 Thank you, Ms. Jung. You can take down the exhibits.

17 And the jurors can put away their transcription  
18 binders.

19 And the government would like to call its next  
20 witness, Dr. Cindy Cole.

21 THE COURT: All right. Is Dr. Cole outside?

22 MR. ADAMS: Yes, your Honor.

23 THE COURT: All right.

24 CYNTHIA COLE,

25 called as a witness by the Government,



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Cole - Direct

1           having been duly sworn, testified as follows:

2           THE DEPUTY CLERK: Please say and spell your name for  
3 the record.

4           THE WITNESS: Cynthia Cole, C-y-n-t-h-i-a, C-o-l-e.

5           THE COURT: You may be seated. Thank you.

6           MR. ADAMS: May I proceed, your Honor?

7           THE COURT: Mr. Adams.

8 DIRECT EXAMINATION

9 BY MR. ADAMS:

10 Q. Good morning, Dr. Cole.

11 A. Good morning.

12 Q. What is your profession?

13 A. I'm a veterinary pharmacologist.

14 Q. And where are you employed?

15 A. In the University of Florida in the racing laboratory.

16 Q. Can you tell us your title at the racing laboratory at the  
17 University of Florida?

18 A. I am director and associate clinical professor.

19           THE COURT: Dr. Cole, can you pull the microphone,  
20 bend it so it's pointing right at your mouth. Thank you very  
21 much.

22           THE WITNESS: Is that better?

23           THE COURT: Yes.

24           I'm sorry, go ahead.

25           MR. ADAMS: Thank you, your Honor.



M1QPFIS3

Cole - Direct

1 BY MR. ADAMS:

2 Q. Dr. Cole, how long have you held that position?

3 A. In this current time period now, the last three years.

4 Q. And was there a time period before the last three years  
5 where you held a similar position?

6 A. Yes. From 2002 to 2006 I was also director of the  
7 laboratory.

8 Q. And can you describe your duties as director of that  
9 laboratory?

10 A. So we are a forensic or drug testing program. Our largest  
11 client is the Division of Pari-mutuel Wagering for the State of  
12 Florida; so they oversee all of the drug testing that is done  
13 on the racehorses in the state. We receive blood and urine  
14 samples from the horses. We test those samples for  
15 non-permitted medications and for the presence of overages of  
16 permitted medications.

17 We also conduct research studies in collaboration with  
18 the College of Veterinary Medicine in a herd of exercised  
19 racehorses or ex-racehorses, reviewing and trying to determine  
20 the effects of drugs and medications on horses, their health,  
21 welfare and racing potential.

22 Q. Can you describe your educational background, please?

23 A. I have a Bachelor's degree in zoology, a Doctor of  
24 Veterinary Medicine, and a Ph.D. in Cardiovascular  
25 Pharmacology, all from the University of Florida.



M1QPFIS3

Cole - Direct

1 I completed an internship in equine sports medicine  
2 and surgery at Tufts, and I returned to Florida and completed a  
3 post-doctoral fellowship in molecular pharmacology.

4 Q. And do you today hold any licenses from any regulatory  
5 bodies?

6 A. I have a license to practice veterinary medicine in the  
7 State of Florida.

8 Q. Do you hold -- in addition to the degrees that you just  
9 mentioned, do you hold any other sorts of professional  
10 credentials?

11 A. I am a member of the American College of Veterinary  
12 Clinical Pharmacology, which is a specialty college  
13 demonstrating an expertise in the area of clinical  
14 pharmacology.

15 Q. Have you, in the past, lectured in the field of clinical  
16 pharmacology?

17 A. Yes. I lectured both to veterinary students in the past,  
18 as well as providing CE, which is continuing education, courses  
19 to veterinarians.

20 Q. And you've mentioned some of these, I believe, but are you  
21 currently a member in any professional organizations related to  
22 your field?

23 A. So I am just past president of my specialty board, American  
24 Clinical Pharmacology, and I also am a member of the American  
25 Association of Equine Practitioners and the American



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Cole - Direct

1 Association of Veterinary Pharmacology and Therapeutics.

2 Q. Okay. Have you published any -- have you published  
3 articles in your field?

4 A. I've published currently 39 peer-reviewed publications,  
5 either as author or co-author; and I've also authored, either  
6 as primary author or co-author, approximately ten book  
7 chapters; and I am the lead editor in a textbook entitled  
8 Equine Clinical Pharmacology.

9 Q. And you've mentioned clinical studies previously. Have you  
10 overseen clinical studies in the field of equine pharmacology?

11 A. Yes, that's something that's been a primary responsibility  
12 during my time as director and during previous employment at  
13 the University of California Davis as a clinical  
14 pharmacologist.

15 Q. And can you describe, in general, the categories of  
16 substances that have been the subject of your studies?

17 A. So they're pretty diverse. We're interested in  
18 characterizing medications, how they can best be used in horses  
19 for clinic treatment of clinical conditions, but we're also  
20 interested in the potential of drugs that should not be  
21 administered to horses that have no clinical usefulness, and so  
22 being able to detect those drugs and understand how they might  
23 alter a horse's performance.

24 These could include anything from painkillers, so  
25 anti-inflammatory drugs, nonsteroidal, as well as steroidal



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Cole - Direct

1 anti-inflammatory drugs, opiates, local anesthetics,  
2 bronchodilators. There's a broad swath of different types of  
3 classes of drugs that we've studied in horses.

4 Q. And have you previously studied the ability of laboratories  
5 to detect certain classes of drugs in the body of a horse?

6 A. Yes. That's one of our areas of particular interest, is  
7 developing new methods to detect drugs that previously were  
8 undetectable by the laboratories.

9 Q. Have you previously testified as an expert in the field of  
10 veterinary medicine and pharmacology?

11 A. Yes, I have.

12 Q. In preparation for your testimony today, have you also  
13 reviewed certain materials provided to you by my office?

14 A. Yes, I did.

15 MR. ADAMS: Ms. Jung, if we could please put up  
16 Government Exhibit 300, which is in evidence through  
17 stipulation 9006.

18 MR. SERCARZ: Your Honor, I'm going to object.

19 THE COURT: You can stay seated.

20 MR. SERCARZ: No objection to the witness'  
21 qualifications. Object to the line of question.

22 THE COURT: Are you stipulating to her testifying as  
23 an expert?

24 MR. SERCARZ: Her qualifications are exceptional. I  
25 object to the line of questions for the reasons discussed



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Cole - Direct

1 yesterday and in the in limine motion.

2 THE COURT: I don't know, are you talking about her  
3 qualifications when you say "the line of questions"?

4 MR. SERCARZ: No, not her --

5 THE COURT: You're anticipating?

6 MR. SERCARZ: Withdrawn.

7 THE COURT: Okay. Mr. Adams?

8 MR. ADAMS: Your Honor, in light of -- your Honor, the  
9 government tenders Dr. Cole as an expert in the fields of  
10 equine veterinary medicine and pharmacology.

11 MR. SERCARZ: No objection to her qualifications.

12 THE COURT: She will be recognized as an expert in  
13 those fields.

14 MR. ADAMS: Thank you, your Honor.

15 BY MR. ADAMS:

16 Q. With respect to Government Exhibit 300, Dr. Cole, have you  
17 previously had a chance to review this document?

18 A. Yes, I have.

19 Q. Have you reviewed certain terms and phrases throughout this  
20 document?

21 A. Yes, I have.

22 Q. And from your experience as an expert in the fields of  
23 veterinary medicine and equine pharmacology, were you familiar  
24 with terms relating to various kinds of drugs throughout this  
25 document?



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Cole - Direct

1 A. Yes. Most of them are fairly straightforward and fairly  
2 commonly used in clinical pharmacology.

3 Q. Okay. Dr. Cole, I'd like to walk through certain portions  
4 of this document, and I'll focus you, for your opinion, on the  
5 meaning of certain phrases as we get to them.

6 To begin with, on page 1, Ms. Jung, if you don't mind  
7 zeroing in on the top paragraph, please.

8 Dr. Cole, are you familiar with the term  
9 exercise-induced pulmonary hemorrhage?

10 A. Yes, I am.

11 Q. Can you explain what exercise-induced pulmonary hemorrhage  
12 is?

13 A. So all horses, probably if they exercise to an extreme  
14 level of intensity, will rupture small molecules -- small  
15 vessels called capillaries in their lungs. We don't entirely  
16 understand the mechanism by which this occurs. Our current  
17 level of understanding is that the horse, likely because he's  
18 been selected over the last several hundred years to be an  
19 extreme athlete, has been selected to have a very high heart, a  
20 very strong heart and this pump, if you will, produces very  
21 high pulmonary pressures; so pressures in the circuit between  
22 the heart through the lungs and those small capillaries can't  
23 withstand that high pressure and they rupture.

24 MR. SERCARZ: Move to strike this.

25 THE COURT: You can stay seated and speak into the



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Cole - Direct

1 microphone.

2 MR. SERCARZ: Move to strike as not responsive to the  
3 question.

4 THE COURT: Overruled.

5 Q. Dr. Cole --

6 THE COURT: You may continue, Dr. Cole.

7 A. So --

8 THE COURT: Had you completed your answer?

9 THE WITNESS: No, I had one more thing.

10 So some horses bleed a small amount in the lungs, and  
11 other horses may have a significant amount of rupture and  
12 produce a lot of blood in the lungs, and in that way, some  
13 horses are mildly and other horses can be moderately affected  
14 in their ability to race when they suffer from EIPH.

15 THE COURT: All right. The last part is stricken,  
16 about their ability to race.

17 Q. Dr. Cole --

18 THE COURT: Stricken.

19 MR. ADAMS: Thank you.

20 Q. Dr. Cole, does EIPH have an effect on the performance of a  
21 racing horse?

22 A. It certainly can.

23 MR. SERCARZ: Objection.

24 THE COURT: Grounds?

25 MR. SERCARZ: Grounds stated in the in limine,



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Cole - Direct

1 prejudice, rule 403.

2 THE COURT: I ruled on the in limine motion. The  
3 ruling stands. The objection is overruled.

4 BY MR. ADAMS:

5 Q. Dr. Cole, you may answer.

6 THE COURT: You can answer it, Dr. Cole. I'm sorry.

7 A. Yes, it can. In some horses, probably the effect is  
8 minimal but in horses, particularly that bleed severely, to the  
9 extent in some cases it can actually be present in their nose,  
10 it can be severely effecting and limiting in their ability to  
11 race.

12 Q. Dr. Cole, if you would look on the second line of what's  
13 been highlighted on the screen here, the word "analgesic."  
14 What is an analgesic?

15 A. The best common term would be a painkiller.

16 Q. Does the administration of analgesic drugs have any effect  
17 on EIPH?

18 A. I'm unaware of any evidence that indicates that a drug that  
19 relieved pain would decrease the severity or incidence of the  
20 condition.

21 Q. Thank you.

22 And, Ms. Jung, if we could go back to the third  
23 paragraph here, beginning "HP Bleeder Plus contains the  
24 strongest test-free vasodilators available on the market."

25 Dr. Cole, are you familiar with the concept of



M1QPFIS3

Cole - Direct

1 vasodilation?

2 A. I am.

3 Q. And can you explain what that means?

4 A. So our blood vessels and the horses' blood vessels  
5 generally have a resting level of tone to them, and certain  
6 drugs and medications and certain endogenous substances can  
7 cause those vessels to dilate, which would lower the amount of  
8 pressure that's going through those vessels.

9 Q. How would drugs that increase vasodilation effect  
10 performance in a racing horse?

11 MR. SERCARZ: Objection.

12 THE COURT: Overruled.

13 A. If a drug could selectively dilate the pulmonary vessels,  
14 it would be expected to lower the pressure that those small  
15 capillaries would be under and might -- would be expected, if  
16 our understanding of the pathogenesis of this condition, the  
17 cause of this condition, it would be expected to decrease the  
18 severity of this condition in the racehorse. The difficulty is  
19 finding a drug that only worked on the pulmonary --

20 THE COURT: You've answered the question, Dr. Cole.

21 Q. Dr. Cole --

22 THE COURT: Excuse me. The last part from "the  
23 difficulty" on is stricken. So the jury should disregard.

24 Q. Dr. Cole, are there some drugs that act as a vasodilator  
25 for the pulmonary system generally, as opposed to for a



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Cole - Direct

1 pulmonary system for particular parts of the horse's body?

2 A. There are no drugs that have been studied and found to be  
3 selective pulmonary vasodilators in the horse.

4 Q. And I'm sorry, can you explain what you mean by "selective  
5 pulmonary"?

6 A. As in there are no drugs that have been studied, that I'm  
7 aware of, that would only cause vasodilation in the lungs.

8 Q. From your studies, can you say whether there are potential  
9 effects, potential negative effects on performance for the  
10 over-administration of vasodilation drugs?

11 MR. SERCARZ: Objection.

12 THE COURT: Is your objection on the same ground?

13 MR. SERCARZ: Yes, your Honor.

14 THE COURT: You have a standing objection.

15 MR. SERCARZ: Thank you.

16 THE COURT: Overruled. You can answer, Doctor.

17 A. Thank you.

18 The concern would be that you could cause vasodilation  
19 in the systemic circulation, which would cause -- might cause  
20 hypotension and, thus, the horse could suffer episodes of  
21 weakness or stumbling, what we would call syncope, where they  
22 might intermittently lose consciousness.

23 Q. Ms. Jung, if we could come out of this, please, and if we  
24 could focus on the last paragraph on this page, just under --  
25 I'm sorry, just under No. 2, Bleeding Pills, beginning with



M1QPFIS3

Cole - Direct

1 "Bleeder pills increase vascular integrity."

2 Dr. Cole, are you familiar with a class of drugs known  
3 as corticosteroids?

4 A. Yes, I am.

5 Q. What are corticosteroids?

6 A. They're a class of molecules that -- there are a number of  
7 synthetic compounds that are corticosteroids, and the body  
8 produces several of its own corticosteroids class of compounds.  
9 They have a wide-ranging effect on the body, on things like  
10 glucose or sugar metabolism. But for racings, the most  
11 important concern would be that they are anti-inflammatory  
12 drugs. So in the setting of something of inflammation, an  
13 injury that is inflamed, these drugs would decrease that  
14 inflammation and, thus, would be painkillers.

15 Q. And with respect to their potential as painkillers, what  
16 performance-enhancing effect, if any, would the administration  
17 of corticosteroids have in the body of a racing horse?

18 A. Well, the concern that we have about the use of  
19 corticosteroids in the racehorse and the reason that we  
20 regulate them quite closely, in that we don't allow them to be  
21 administered within 24, if not longer periods of time before a  
22 race, is that they are painkillers.

23 And so if the horse has an injury and we take away  
24 that pain, the horse may run to a level that causes additional  
25 injury to that limb or to the horse, and he can suffer what's



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Cole - Direct

1 known as, in a worst-case scenario, a catastrophic breakdown  
2 injury, where he breaks a leg.

3 Because of the structure of the horse, these types of  
4 injuries are often hard to repair; so it often causes the horse  
5 to lose its life, and there is usually a jockey on the back of  
6 that horse that can become injured or killed, and other horses  
7 racing in that race can also become injured if they were to  
8 fall.

9 MR. SERCARZ: Move for a mistrial.

10 THE COURT: Overruled.

11 Q. Dr. Cole --

12 THE COURT: Hold on, hold on.

13 (Pause)

14 All right. Everything from the comment about "because  
15 of the structure of the horse" and the catastrophic nature of  
16 the injury and the potential for harm to other horses and  
17 jockeys is stricken and should be disregarded by the jury.

18 Dr. Cole, I'm going to admonish you to please limit  
19 your answers to just the question that was asked, please.

20 MR. ADAMS: Ms. Jung, if we could please pull up  
21 Government Exhibit 124-A.

22 And for the jurors, the transcript binder 124-AT.

23 THE COURT: All right. Before you go on, I just want  
24 to pause and remind the jury that when I strike evidence, it is  
25 not something you may properly consider in connection with your



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Cole - Direct

1 deliberations. It is not part of the evidence in this case,  
2 and you need to disregard it. All right? Thank you.

3 Mr. Adams, whenever you're ready.

4 MR. ADAMS: Thank you, your Honor.

5 And just to read for the record, this is a call on  
6 April 3rd, 2019, between Seth Fishman and Lisa Giannelli.

7 And, Ms. Jung, you can go ahead and play it. Thank  
8 you.

9 (Audio recording played)

10 MR. ADAMS: Thank you, Ms. Jung.

11 BY MR. ADAMS:

12 Q. Dr. Cole, a moment ago you made a reference to, I believe  
13 you used the word "we" and limitations on the timing of  
14 administration of corticosteroids, who did you mean by "we"?

15 A. In the State of Florida it is not permitted to administer  
16 corticosteroids within 24 hours of a race.

17 Q. And who governs the administration of drugs to racing  
18 horses in the State of Florida?

19 A. That would be the Division of Pari-mutuel Wagering.

20 Q. Ms. Jung, if we could re-call Government Exhibit 300, and  
21 go to the second page, under No. 3, VO2 Max.

22 Dr. Cole, are you familiar with the phrase VO2 Max?

23 A. I am.

24 Q. And what does VO2 Max mean in the context of your field?

25 A. It is the maximum amount of oxygen that a horse will



M1QPFIS3

Cole - Direct

1 consume when exercising at his 100 percent capacity.

2 Q. Does an increase in oxygen consumption by an exercising  
3 racehorse have any effect on the performance of the racing  
4 horse?

5 A. The ability to --

6 THE COURT: That's a yes or no question, please.

7 A. Yes.

8 Q. What is that effect?

9 A. It affects the duration and amount of -- duration of time  
10 and the amount of energy that a horse can expend.

11 Q. And if we can go now to line 4, reading "Homeogesic  
12 (Natural analgesic - painkiller).

13 Dr. Cole, what performance-enhancing effect, if any,  
14 can the administration of analgesic drugs have on the body of a  
15 racing horse?

16 A. If the horse is injured, the removal of that pain will  
17 allow the horse to compete at a level above what he would  
18 compete at with that injury untreated.

19 Q. And pointing you to the second line in the first paragraph  
20 here, the reference to MSM and DMG, are those acronyms familiar  
21 to you from your field?

22 A. Yes, they are.

23 Q. Can you tell us what MSM means?

24 A. It is methylsulfonylmethane.

25 Q. And can you tell us what DMG means?



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Cole - Direct

1 A. Dimethyl-glycine.

2 Q. And can you describe what performance-enhancing effect, if  
3 any, the administration of MSM might have in the body of a  
4 racing horse?

5 A. In terms of exercise performance, MSM is a mild analgesic  
6 or a mild anti-inflammatory agent; so it could remove pain.

7 Q. And what performance-enhancing effect, if any, does DMG  
8 have in the body of a racing horse?

9 A. It is a anti-oxidant, which would be unlikely to have  
10 effects, direct effects, on exercise performance acutely,  
11 meaning immediately. But it is also a buffering agent, and in  
12 that regard, it could have a performance-enhancing effect.

13 Q. Can you describe what you mean by a buffering agent?

14 A. So when horses exercise intensely, when any human or  
15 mammalian species exercises intensely, one of the by-products  
16 of muscle metabolisms, is acids, particularly lactic acids.  
17 When those acids build up into the muscles, it is generally  
18 accepted that they can cause fatigue in that muscle; so agents  
19 such as DMG that can buffer or absorb some of those acids can  
20 prevent fatigue in the muscle.

21 Q. Thank you. If we could go to No. 5, PSDS, reading,  
22 (Natural analgesic - Painkiller), and in the bolded top line,  
23 reading, "This product is based on the original Panacin  
24 formulation, it has 2.5 times more D-Phenylalanine than all  
25 other compounded and production versions."



M1QPFIS3

Cole - Direct

1 Are you familiar with a drug referred to as Panacin?

2 A. No.

3 Q. Are you familiar with a substance known as D-Phenylalanine?

4 A. Yes.

5 Q. What is D-Phenylalanine?

6 A. Phenylalanine itself is an amino acid, one of the essential  
7 amino acids that must be obtained in the diet. The most common  
8 form in nature is the L-phenylalanine form. The D form is an  
9 isomer or a mirror image of the L form, and is not well  
10 described in terms of its effects in the scientific literature.

11 Q. If we could go to No. 6, please. And as I preview, I'm  
12 going to call out some more transcripts in just a moment. But  
13 before I do that, let me focus first on No. 6, Equi-Mass PG-2,  
14 (Muscle Growth Factor). Are you familiar with the phrase  
15 "muscle growth factor"?

16 A. I'm familiar with the phrase.

17 Q. What is a growth factor?

18 A. A growth factor is a substance produced by the body that  
19 stimulates growth, development, cell division or maturation of  
20 a tissue.

21 Q. And on the first line, where it reads "human growth  
22 hormone," are you familiar with human growth hormone from your  
23 studies?

24 A. Yes.

25 Q. What performance-enhancing effect, if any, would the



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Cole - Direct

1 administration of human growth hormone have in the body of a  
2 racing horse?

3 A. Human growth hormone likely also reacts with the receptors  
4 in the horse, and so it would likely produce growth and  
5 development of a lot of different tissues, including muscle,  
6 skeletal, and other areas that might make the horse grow larger  
7 than would -- or she would at that particular age. They would  
8 be more mature than they typically would if only under the  
9 influence of their own growth hormone.

10 Q. And with respect to growth factors, what  
11 performance-enhancing effect, if any, would the administration  
12 of growth factors have in the body of a racing horse?

13 A. It's really difficult to tell because the phrase is so  
14 nebulous of what exactly a growth factor is. They just  
15 generally would be a factor that stimulates cells to divide or  
16 to differentiate, and it's really hard to know because one  
17 doesn't really know what that growth factor is.

18 Q. If a drug was labeled simply as growth factor, would you be  
19 able to tell what that drug was?

20 A. No, I would not.

21 Q. Would you be able to tell how that drug ought to be safely  
22 administered?

23 A. I could not.

24 MR. ADAMS: If we could please call up Government  
25 Exhibit 127-A and T in the binders. We'll put it on the screen



M1QPFIS3

Cole - Direct

1 as well.

2 And, your Honor, this is a call on April 4th, 2019,  
3 between Seth Fishman and an individual identified as Nick  
4 DeVita.

5 THE COURT: All right. Give everyone a minute to find  
6 it.

7 MR. ADAMS: Certainly.

8 (Pause)

9 THE COURT: All right, Mr. Adams.

10 MR. ADAMS: All right. Ms. Jung, if you could please  
11 play 127-A.

12 (Audio recording played)

13 Thank you, Ms. Jung.

14 If we could turn to Government Exhibit 111-AT and the  
15 audio, 111-A. And this is a call on February 20th, 2019,  
16 between Seth Fishman and John Pundyk.

17 THE COURT: All right.

18 MR. ADAMS: And, Ms. Jung, you can play.

19 (Audio recording played)

20 Thank you, Ms. Jung. You can take that down, and  
21 we'll go back to Government Exhibit 300, please.

22 BY MR. ADAMS:

23 Q. Dr. Cole, in that call we heard a reference to the term  
24 "androgenic." If we could look at No. 7 here reading "GNRH  
25 (Factrel Androgenic Hormone), what is an androgenic hormone?



M1QPFIS3

Cole - Direct

1 A. It is considered a hormone that has muscle-building  
2 capability, often associated with the male androgens that are  
3 produced; so testosterone and related compounds.

4 Q. Thank you. And are you familiar with a drug known as GNRH?

5 A. I am.

6 Q. What is GNRH?

7 A. It is a gonadotropin-releasing hormone.

8 Q. And what effect, if any, does the administration of GNRH  
9 have with respect to performance of a racing horse?

10 A. GNRH triggers the pituitary gland, which is a small gland  
11 in the center of the brain, to release two different hormones,  
12 LH and FSH. In male horses, these hormones stimulate the  
13 release of testosterone from the testes.

14 In females horses, they stimulate the development and  
15 maturation of ovarian follicles, otherwise called eggs, and the  
16 associated hormones that would be produced by those developing  
17 follicles.

18 Q. With respect to horses that will be racing, is there a  
19 performance-enhancing effect associated with GNRH?

20 A. So certainly in intact male horses, you would have an  
21 increased production of testosterone and in fillies and mares,  
22 you would have an alteration in their estrus cycle, which could  
23 have effects on their behavior and their attitude in racing.

24 Q. What is a filly?

25 A. Filly is an intact female horse less than four years of



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Cole - Direct

1 age.

2 Q. And just to complete, for completeness' sake, what is a  
3 mare?

4 A. Mare is an intact, any female horse greater than four years  
5 of age.

6 MR. ADAMS: Ms. Jung, can we please put up  
7 simultaneous, please, Government Exhibits 4028, 4029 and 1023,  
8 all in evidence.

9 Your Honor, 4028 and 4029 are in evidence through  
10 Mr. Folensbee, and 1023 through from stipulation and derived  
11 from an electronic device seized from Seth Fishman.

12 BY MR. ADAMS:

13 Q. And, Dr. Cole, are you able to read what's on the right  
14 side of your screen?

15 A. The large type.

16 Q. Can you read the large type, please?

17 A. It's GNRH.

18 Q. Thank you, Ms. Jung. We can go back to Government  
19 Exhibit 300. If we could go to No. 8, reading "ITTP Plus."

20 Dr. Cole, are you familiar with a substance known as  
21 ITTP Plus?

22 A. I am.

23 Q. What is that?

24 A. It is an inositol tripyrophosphate.

25 Q. And can you describe its effect in the body of a racing



M1QPFIS3

Cole - Direct

1 horse?

2 A. It has not been studied in the horse.

3 Q. Has it been studied in any animal?

4 A. It has been studied in mice and in humans.

5 Q. And do the studies that you consulted reflect any effect on  
6 the body of the mice or humans into which it's been  
7 administered?

8 A. Yes. What this compound does is it binds to hemoglobin,  
9 and hemoglobin is the protein that is present in red blood  
10 cells that carries oxygen. And what this compound does is it  
11 alters the structure of the hemoglobin to favor release of  
12 oxygen at the tissues.

13 Q. And, Dr. Cole, in your professional experience, is it  
14 possible to safely assume what the effects in the body of one  
15 species will be on the basis of studies done on the bodies of a  
16 different species?

17 MR. SERCARZ: Objection.

18 THE COURT: Grounds? You need to speak -- I'm sorry  
19 to keep reminding you.

20 MR. SERCARZ: Beyond the scope.

21 THE COURT: Beyond the scope of what?

22 MR. SERCARZ: Her expertise.

23 THE COURT: Oh, if that's so, she will say she doesn't  
24 know.

25 The question was, in your professional experience; so



M1QPFIS3

Cole - Direct

1 if this is outside of your expertise, you need to tell us that,  
2 please.

3 A. It is not. It is very basic pharmacology that you cannot  
4 extrapolate the safety and efficacy of a drug from one species  
5 to another.

6 Q. Ms. Jung, if we could please call up two calls, first,  
7 Government Exhibit 143-C and 143-CT, which is a call on  
8 June 12th, 2019. The participants are Seth Fishman, John  
9 Pundyk and Geoff Vernon. And I think we're ready to play.

10 (Audio recording played)

11 Thank you, Ms. Jung. And can we please call up  
12 Government Exhibit 126-A and 126-AT.

13 This is a call dated April 4th, 2019, between Seth  
14 Fishman and Jordan Fishman. Just one moment, Ms. Jung.

15 (Pause)

16 All right. Thank you.

17 (Audio recording played)

18 BY MR. ADAMS:

19 Q. Dr. Cole, are you familiar with a drug known as EPO?

20 A. I am.

21 Q. What is EPO?

22 A. It's erythropoietin.

23 Q. And what effect, if any, does erythropoietin, or EPO, have  
24 on the body of a racing horse?

25 A. It would stimulate the production of red blood cells, and



M1QPFIS3

Cole - Direct

1 red blood cells, as I indicated, carry oxygen through the body.

2 Q. Does the stimulation of the creation of red blood cells  
3 have any performance-enhancing effect on a racehorse?

4 A. It is possible, yes, because it's -- yes.

5 Q. And can you describe what that possible  
6 performance-enhancing effect would be?

7 A. As we indicated, the maximum amount of oxygen that a horse  
8 can utilize during intense exercise, VO2 max, could be  
9 increased if you increase the ability of his blood to carry  
10 more oxygen at any given time.

11 Q. Are you familiar with the term EPO mimetic?

12 A. I am familiar with the term.

13 Q. What is a mimetic?

14 A. It is something that is similar to or a copy of.

15 Q. Thank you. If we could turn back to Government  
16 Exhibit 300, please, and we'll go to the line -- it's line 13  
17 on page 4, I believe. Here we go. Reading, "ACTH."

18 Dr. Cole, are you familiar with the substance known as  
19 ACTH?

20 A. Yes, I am.

21 Q. What is ACTH?

22 A. Adrenocorticotrophic hormone.

23 Q. Can you say that one more time slowly?

24 A. Adrenocorticotrophic hormone.

25 Q. Thank you. I will say ACTH. What is ACTH?



M1QPFIS3

Cole - Direct

1 A. It is a hormone that is produced by the pituitary gland  
2 that stimulates release of a number of different groups of  
3 compounds from the adrenal glands. One group is responsible  
4 for water and electrolyte balance in the body. Electrolytes,  
5 being small molecules, substances, salt, so sodium chloride,  
6 potassium, magnesium, and the balance between those and water  
7 are maintained as part of the release of these substances.

8 ACTH also stimulates the release of an endogenous  
9 corticosteroid called cortisol, and it stimulates the release  
10 of adrenal androgens, which are substances that are precursors  
11 to testosterone in the body.

12 Q. And what performance-enhancing effect, if any, would the  
13 administration of ACTH have in the body of a racing horse?

14 A. The primary effect would be the effect of the cortisol,  
15 which has -- a corticosteroid would suppress inflammation and  
16 relieve pain in the horse if there was an inflammatory cause  
17 for pain. It would also enhance glucose production, which  
18 glucose is the primary nutrient or substance which is burned  
19 during intense exercise.

20 Q. Thank you. And you referenced the anti-inflammatory effect  
21 of this drug. Is there a difference between reducing  
22 inflammation caused by an injury and healing the injury?

23 A. Yes. The reduction of inflammation can be part of the  
24 healing process, but it's a long-term process. So the  
25 immediate release or prevention of inflammation or lessening of



M1QPFIS3

Cole - Direct

1 inflammation does nothing to actually heal the injury acutely.

2 Q. Thank you. Can we please call up Government Exhibit 1022.

3 MR. ADAMS: Also in evidence, your Honor, through the  
4 same stipulation, 9008.

5 THE COURT: Yes.

6 Q. Dr. Cole, are you familiar with the term "safety margin"?

7 A. Yes, I am.

8 Q. What is a safety margin as it applies to the administration  
9 of drugs?

10 MR. SERCARZ: Objection.

11 THE COURT: Grounds?

12 MR. SERCARZ: Prejudicial.

13 THE COURT: Overruled.

14 A. So the safety margin when we are referring to drugs, is the  
15 margin between what is a safe and efficacious dose; so a dose  
16 that produces the effect that you want and the dose that might  
17 produce or typically would produce a negative effect or a  
18 harmful effect to the horse.

19 Q. What does it mean for a drug to have a wide safety margin?

20 A. It means that I can administer a dose range, a very high  
21 dose range, and not be concerned about whether or not I would  
22 produce a side effect or an adverse event in the horse.

23 Q. And conversely, what does it mean to have a narrow safety  
24 margin?

25 A. It means I must be very limited in the dose range that I



M1QPFIS3

Cole - Direct

1 use.

2 Q. Is there a relationship between a drug's safety margin and  
3 the size of a horse into which a dose is being administered?

4 A. Yes.

5 Q. What is that relationship?

6 A. Most commonly in horses, we administer a dose based on  
7 their weight; so a particular milligram per kilogram of body  
8 weight or pound of body weight, as opposed to administering a  
9 single dose per horse. This is because horses can vary in --

10 MR. SERCARZ: Objection to the "this is because."

11 THE COURT: Sustained.

12 You've answered the question, Dr. Cole.

13 Q. Thank you, Dr. Cole.

14 Is there a relationship with respect to safety  
15 margins, is there a relationship between a drug and its method  
16 of administration, for example, intramuscular versus  
17 intravenous administration?

18 A. Some drugs, because they are an irritant, can only be  
19 administered intravenously, and other drugs have to be  
20 administered intramuscularly. Yes, it depends on the drug, the  
21 route of administration.

22 Q. And from your experience, does ACTH have a wide or a narrow  
23 safety margin?

24 MR. SERCARZ: Objection.

25 THE COURT: Grounds?



M1QPFIS3

Cole - Direct

1 MR. SERCARZ: Again, we're heading into the area I  
2 find objectionable.

3 THE COURT: Overruled.

4 A. ACTH has a relatively moderate safety -- it is a -- It has  
5 a moderate safety margin.

6 Q. What are the factors of ACTH that make it such that it has  
7 a moderate safety margin?

8 A. Because its effects are so broad ranging and in so many  
9 different body systems, we have to be very specific in how we  
10 administer the drug.

11 Q. If we could take this down, please. Go back to  
12 Exhibit 300, and to line 16 now. Reading "EGH (Increases  
13 Testosterone)."

14 Dr. Cole, are you familiar with a substance known as  
15 EGH?

16 A. It typically --

17 THE COURT: That's a yes or no.

18 A. No.

19 Q. Are you familiar with a substance known as equine growth  
20 hormone?

21 A. Yes.

22 Q. What is equine growth hormone?

23 A. It is the hormone that is produced by the horse that is  
24 referred to as growth hormone.

25 Q. Is there a substance of which you are aware, commercially



M1QPFIS3

Cole - Direct

1 available, referred to as EGH in the United States?

2 A. No.

3 Q. Is there such a substance commercially available outside of  
4 the United States, to your knowledge?

5 A. To my knowledge, there is an approved product that is  
6 available in Australia that is equine growth hormone.

7 Q. Are you familiar with the effects of equine growth hormone  
8 in the body of a racing horse?

9 A. Yes.

10 Q. What are the effects in the body of a racing horse?

11 A. Growth hormone would be responsible for increasing muscle  
12 development, both growth, maturation of those tissues, as well  
13 as growth and development of a number of other body systems.

14 Q. Looking at the same portion of this exhibit, reading DHEA,  
15 are you familiar with that acronym?

16 A. I am.

17 Q. Can you slowly tell us what DHEA refers to?

18 A. I can't. I don't remember.

19 Q. Notwithstanding the acronym, are you familiar with the  
20 effect of DHEA?

21 A. Yes, I am.

22 Q. What is DHEA's effect in the body of a racing horse?

23 A. It is produced by the adrenal gland, and its effects is a  
24 pre-testosterone; so it is converted to testosterone.

25 Q. And what is the effect of testosterone in the body of a



M1QPFIS3

Cole - Direct

1 racing horse?

2 A. Testosterone is the major anabolic steroid produced by both  
3 male and females, males producing a lot more and that hormone  
4 is responsible for the secondary sexual characteristics that we  
5 associate with males; so larger muscles, bigger bones,  
6 behavioral effects generally associated with increased  
7 aggressiveness.

8 Q. And what performance-enhancing effects, if any, do drugs  
9 containing testosterone or causing the increase of testosterone  
10 have in the body of a racing horse?

11 A. Potentially they -- with more muscle and bigger bone, we  
12 end up with a horse that can race faster and longer  
13 potentially.

14 Q. Thank you.

15 Ms. Jung, if we could continue to No. 17, Equifactor.  
16 If you could blow that up, please.

17 And just to read from the bottom portion of this  
18 paragraph regarding Equifactor "Since the molecule is altered,  
19 the labs could never detect unless a snitch tuned a bottle in  
20 and the racing authorities decided to make a test. This is  
21 highly unlikely, but a possibility."

22 Dr. Cole, in your experience with the Florida racing  
23 lab, do you develop or have you assisted in developing tests  
24 for detecting certain performance-enhancing drugs?

25 A. Yes, I have.



M1QPFIS3

Cole - Direct

1 Q. In doing so, does the molecular weight of a particular  
2 compound play a role in whether you can or cannot detect the  
3 presence of that compound?

4 A. Yes. The molecular weight is important in our current  
5 methods for detecting many substances.

6 Q. And can you describe, in general, what molecular weight  
7 refers to?

8 A. It's the weight of the compound.

9 Q. And if we could now turn to the last page of Government  
10 Exhibit 300. No. 19, Serenity. If we could blow this up,  
11 please.

12 Dr. Cole, have you, in the course of your experience,  
13 studied the effects of sedatives on the body of racing horses?

14 A. Yes, I have.

15 Q. Are there performance-enhancing effects associated with the  
16 administration of sedatives in horses?

17 A. In some horses they can be performance enhancing.

18 Q. Can you describe the way in which sedatives can have a  
19 performance-enhancing effect?

20 A. It is counterintuitive, but stress and anxiety and  
21 nervousness is a major problem in many, particularly young,  
22 racehorses, and so the ability to produce mild sedation, take  
23 the edge off, if you will, in a racehorse can actually help the  
24 horse perform better in a particular race.

25 MR. ADAMS: And, Ms. Jung, if we could please call up



M1QPFIS3

Cole - Direct

1 Government Exhibit 127-C and 127-CT, which is the transcript.

2 And this is a call on April 4th between Seth Fishman  
3 and Nick DeVita.

4 And you can go say head and play, Ms. Jung.

5 (Audio recording played)

6 (Continued on next page)

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M1QTFIS4

Cole - Cross

1 MR. ADAMS: Thank you, Ms. Jung.

2 Your Honor, no further questions.

3 THE COURT: All right. Thank you.

4 Mr. Sercarz, do you wish to begin or do you want to  
5 take the lunch -- let me see, is the lunch break an option now?

6 DEPUTY CLERK: Probably another ten minutes.

7 THE COURT: Why don't with go forward for 10 or 15  
8 minutes then we'll break for lunch.

9 CROSS-EXAMINATION

10 BY MR. SERCARZ:

11 Q. Good afternoon, Dr. Cole.

12 A. Good afternoon.

13 Q. Doctor, have you ever worked as a practicing veterinarian?

14 A. Yes, I have.

15 Q. And when was that?

16 A. During my internship and intermittently over the last 25  
17 years on my own horses and friends' and family's.

18 Q. Are you familiar with the term breezing?

19 A. Yes, I am.

20 Q. Breezing a horse.

21 Am I correct that the training that racehorses undergo  
22 is itself stressful to the horse?

23 A. Yes.

24 Q. And are there medications that are appropriately prescribed  
25 to assist horses in dealing with the stress of training?



M1QTFIS4

Cole - Cross

1 A. Yes.

2 Q. Is Lasix, for example, a substance that is administered to  
3 horses when they are training, separate and apart from  
4 competition?

5 A. At certain times, yes.

6 Q. If a product is recommended to assist the horse in dealing  
7 with strenuous exercise, does that indicate to you it may be  
8 used for training as well as competition?

9 MR. ADAMS: Objection.

10 THE COURT: Are you able to answer, Dr. Cole?

11 THE WITNESS: Yes.

12 THE COURT: Overruled.

13 Q. You may answer, I believe.

14 A. Yes, the answer was there are drugs that could be used in  
15 both training and racing.

16 Q. Incidentally, you have testified about something called the  
17 24-hour rule in Florida?

18 A. Yes.

19 Q. Do you recall that?

20 Racing regulators set standards for the use of  
21 substances within a certain it timeframe of race, am I correct?

22 A. That's correct.

23 Q. And that may vary from state to state and location to  
24 location, am I correct?

25 A. State to state, yes.



M1QTFIS4

Cole - Cross

1 Q. All right. You just testified moments ago, I believe, in  
2 connection with a product called Equifactor.

3 MR. SERCARZ: In fact, may I ask that Government  
4 Exhibit 300 be brought up on the screen again and we go to  
5 No. 17?

6 THE COURT: All right.

7 Q. Do you see the last two sentences beginning with: Some  
8 have noticed the increase in RBCs using the product.

9 It's actually the last three sentences. Do you see  
10 those three sentences?

11 A. I do.

12 Q. And the next sentence reads: I cannot recommend using  
13 within four days, but there are some using the day before for  
14 tie up horses.

15 Do you see that?

16 A. Yes, I do.

17 Q. By the way, the term "tie up," what does that reference?

18 A. Generally refers to a horse that has a muscle condition  
19 where they become very painful, swollen and have difficulty  
20 walking.

21 Q. All right. The next sentence reads: Since the molecule is  
22 altered, the labs could never detect unless a snitch tuned,  
23 T-U-N-E-D, a bottle in and the racing authorities decide to  
24 make a test.

25 Do you see that?



M1QTFIS4

Cole - Cross

1 A. I do.

2 Q. Now by the way, the word "tuned" appears to be a  
3 misspelling of the word "turned," fair enough?

4 It then says: This is highly unlikely, but a  
5 possibility. Do you see that?

6 A. I do.

7 Q. You mentioned earlier that appropriate dosage for a horse  
8 may depend upon its size and weight, is that correct?

9 A. That is correct.

10 Q. And among the regulations that are imposed on horses in  
11 order to ensure the integrity of a horserace are rules  
12 regarding the amount of a substance in the body of the horse,  
13 am I correct?

14 A. I'm not entirely sure of the question.

15 Q. If a substance is forbidden and a test discloses the  
16 presence of the substance in an abnormal degree, that horse can  
17 be disqualified, is that correct?

18 A. That is correct.

19 Q. Would it be fair to say that sometimes determining when you  
20 have to withdraw a medication in order that a horse not have an  
21 inordinate amount of a disapproved substance is an art rather  
22 than a science?

23 MR. ADAMS: Objection.

24 THE COURT: Sustained.

25 Q. Is it always clear when one must stop administering a



M1QTFIS4

Cole - Cross

1 substance in order to ensure that a horse will not have a  
2 positive outcome on a blood test?

3 MR. ADAMS: Objection.

4 THE COURT: Sustained.

5 Q. You mentioned earlier in your testimony that there are some  
6 products that are approved in the United States -- withdrawn,  
7 that are approved outside is the United States that are banned  
8 within the United States, is that correct?

9 A. They are not allowed -- they're not banned per se, but if  
10 they were not approved, they are typically not allowed unless  
11 you have an FDA exemption.

12 Q. And does the term "not allowed" also refer to whether or  
13 not they are allowed in the body of a racehorse during a race?

14 A. The FDA -- currently the Racing Commissioners International  
15 classification system recommends that no drug be present in the  
16 horse that is not approved by the FDA.

17 Q. That's here in the United States, correct?

18 A. Correct, but there is some variation in state-to-state  
19 interpretation.

20 Q. Is there a variation between locales here in the United  
21 States and the rules abroad?

22 A. Yes, there are.

23 Q. And are there countries that allow greater latitude in what  
24 is permitted within the system of a racehorse?

25 MR. ADAMS: Objection.



M1QTFIS4

Cole - Cross

1 THE COURT: Overruled.

2 A. I'm unaware of countries that have more lax rules than the  
3 U.S.

4 Q. You testified about the effect of certain substances on  
5 inflammation and healing. Do you recall that testimony?

6 A. I do.

7 Q. There are substances that reduce inflammation and promote  
8 healing but which also may have a performance-enhancing aspect  
9 when it comes to the horse, is that correct?

10 A. That is correct.

11 Q. Are you familiar with the veterinarian's oath?

12 A. I am.

13 Q. And part of the veterinarian's oath is to prevent animal  
14 suffering, is that correct?

15 MR. ADAMS: Objection, scope.

16 THE COURT: I'm going to allow it.

17 A. Yes.

18 Q. If a veterinarian is confronted with a horse and makes a  
19 diagnosis that that horse is suffering from inflammation, might  
20 it be appropriate to prescribe medicine that would alleviate  
21 the inflammation and promote healing in the racehorse?

22 A. In some situations it would.

23 Q. Are there drugs that have beneficial effects for horses but  
24 which also may have performance-enhancing effects?

25 A. In some situations, yes.



M1QTFIS4

Cole - Cross

1 Q. You're familiar with the drug called Clenbuterol, am I  
2 correct?

3 A. Yes.

4 Q. Am I correct that Clenbuterol was -- had many positive  
5 effects in the treatment of the racehorses?

6 A. No, I would not agree with that.

7 MR. SERCARZ: May I have one moment?

8 (Pause)

9 Q. Is it your view that if used appropriately -- this a  
10 horse -- Clenbuterol has worthwhile legitimate medication  
11 effects?

12 A. Yes.

13 Q. It is a bronchodilator, am I correct?

14 A. That is correct.

15 Q. And tell the ladies and gentlemen of the jury what  
16 bronchodilatation does.

17 A. So bronchodilatation is basically dilating the bronchioles  
18 or the airways. If any of you have asthma, you may have used a  
19 bronchodilator to reverse that bronchodilatation during an  
20 asthmatic attack.

21 Q. Am I correct that Clenbuterol also has been found to have  
22 performance-enhancing effects?

23 A. I'm unaware of its performance-enhancing effect.

24 Q. Let me use a different word. You testified about a number  
25 of products having anabolic effects?



M1QTFIS4

Cole - Cross

1 A. Yes.

2 Q. Is Clenbuterol a drug that has anabolic effects?

3 A. It has a drug that has been shown to have anabolic effects.

4 Q. Are those anabolic effects potentially performance  
5 enhancing?

6 A. Potentially they could be performance enhancing.

7 Q. Indeed, isn't it a fact that as a result of those anabolic  
8 effects, Clenbuterol was banned from use during a race in many  
9 jurisdictions?

10 A. That is correct.

11 Q. And indeed, notwithstanding that it was banned, you agree  
12 that it is a very worthwhile legitimate medication when used  
13 appropriately, correct?

14 A. When used appropriately, correct.

15 Q. So then would it be fair to say that a veterinarian can  
16 prescribe a drug that has worthwhile legitimate medication  
17 effects when used appropriately and that drug can be used as a  
18 performance-enhancing drug?

19 A. It's difficult to answer that yes or no.

20 Q. Prior to 2008, was Clenbuterol prescribed by veterinarians?

21 A. Yes.

22 Q. Prescribed for its use as a bronchodilator, correct?

23 A. That was one of the uses, correct.

24 Q. After 2008 the drug was banned in racing, isn't that  
25 correct?



M1QTFIS4

Cole - Cross

1 A. That is not correct.

2 Q. Did anything happen to restrict the usage of Clenbuterol  
3 after 2008 in racehorses?

4 A. I don't know the exact year, but in some jurisdictions the  
5 use of Clenbuterol has been forbidden, so the presence of any  
6 Clenbuterol would be a violation. But for example, in the  
7 State of Florida, Clenbuterol can still be administered via the  
8 rules of the division of parimutuel wagering.

9 THE COURT: Mr. Sercarz, can you find a convenient  
10 breaking point?

11 MR. SERCARZ: This would be a good one, your Honor.

12 THE COURT: We will take our lunch break now then. I  
13 just remind you all, please leave your notebooks and the  
14 transcript binders on your chair. Please do not discuss the  
15 case or any of the evidence until the conclusion of the case  
16 and you retire for your deliberations.

17 Have a good lunch, everyone.

18 Dr. Cole, I remind you you remain under oath and may  
19 not talk with the lawyers for government over the break --

20 THE WITNESS: Yes, ma'am.

21 THE COURT: -- about the case.

22 (Jury not present)

23 THE COURT: You're excused, Dr. Cole.

24 Everyone else please be seated.

25 (Witness not present)



M1QTFIS4

Cole - Cross

1 THE COURT: All right. I just really want to get a  
2 sense of timing for the rest of the day.

3 Mr. Sercarz, do you have any sense? I'm not rushing  
4 you.

5 MR. SERCARZ: Understood. I do not have much more for  
6 this witness.

7 THE COURT: Then you have your next witnesses lined  
8 up, Mr. Adams?

9 MR. ADAMS: I do, your Honor, very short redirect, I  
10 imagine for Dr. Cole, then Ross Cohen next.

11 THE COURT: All right. Anything else?

12 All right. Everyone have a good lunch and I will see  
13 you back here. I should have said it to the jury, but  
14 Ms. Dempsey will take care of them.

15 I will see you back here say 1:45.

16 Thank you.

17 (Luncheon recess taken)

18 (Continued on next page)



M1QTFIS4

Cole - Cross

## AFTERNOON SESSION

(1:50 p.m.)

(Jury present)

THE COURT: Good afternoon, everyone, I hope you had a pleasant lunch break.

Mr. Sercarz.

Do we have our witness?

MR. ADAMS: Coming in now.

THE COURT: Good afternoon, Dr. Cole. You remain under oath and you may remove your mask. Thank you.

THE WITNESS: Thank you.

BY MR. SERCARZ:

Q. Dr. Cole, I have a few more questions about some of the substances you testified about earlier. You recall testifying about HGH?

A. Yes.

Q. Would a specific growth factor with few reported side effects be a safer option than HGH?

MR. ADAMS: Objection, form.

THE COURT: Sustained.

Q. Am I correct that many, if not most, racehorses suffer from gastric issues and ulcers?

A. Yes, you would be correct.

Q. Would a preventive therapy be an appropriate regimen for horses?



M1QTFIS4

Cole - Redirect

1 A. Yes.

2 Q. Including racehorses?

3 A. Yes.

4 Q. Are there instances where such preventive therapies have  
5 been found to have performance-enhancing effects?

6 A. Not to my knowledge.

7 Q. Am I correct that in Florida, according to the racing  
8 regulations that you earlier described, Florida allows certain  
9 corticosteroids on race day?

10 A. No, that is not true currently.

11 Q. And am I correct that with regard to new anabolics, they  
12 were once lawful but they are now banned?

13 A. Correct. In the State of Florida there's some exception.

14 Q. There is -- I'm sorry?

15 A. In the State of Florida they have a limited use -- ability  
16 to use them in a limited fashion.

17 MR. SERCARZ: Thank you, no further questions.

18 THE COURT: Thank you.

19 Mr. Adams?

20 MR. ADAMS: Briefly, your Honor.

21 THE COURT: Sure.

22 REDIRECT EXAMINATION

23 BY MR. ADAMS:

24 Q. Dr. Cole, is human growth hormone a drug for the treatment  
25 of gastric ulcers in racehorses?



M1QTFIS4

Cole - Redirect

1 A. No, it is not.

2 Q. Is ACTH?

3 A. No, it is not.

4 Q. Is GNRH?

5 A. No.

6 Q. How about sedatives?

7 A. No, they are not.

8 MR. ADAMS: Ms. Jung, could you please pull up  
9 Government Exhibits -- what's in evidence as 1025, 1027 and  
10 1028, all files recovered off of a device seized from a person  
11 of Seth Fishman.

12 And Ms. Jung, if you could rotate 1028. If it's  
13 possible to blow up one of the rectangles of IT Plus, please.

14 Q. Dr. Cole, do you recall questions regarding applicable  
15 racing regulations surrounding performance-enhancing drugs  
16 across multiple jurisdictions on cross-examination?

17 A. I do.

18 Q. Are you aware of any racing jurisdiction that allows for  
19 the administration of blood-building drugs on the day of a  
20 race?

21 A. I'm not aware of any that allows that.

22 Q. Are you aware of any jurisdiction that allows the  
23 administration of performance-enhancing drugs generally on the  
24 day of a race?

25 A. I'm not aware of any.



M1QTFIS4

Cole - Redirect

1 Q. Are you aware of any jurisdiction that allows for the  
2 administration of Epogen to a racing horse at any time?

3 A. I am unaware of any in the U.S. that allows.

4 Q. In the State of Florida in particular, are there any  
5 restrictions on the use of non-FDA-approved products with  
6 respect to racing horses?

7 A. Non-FDA-approved products are not allowed to be  
8 administered to racehorses.

9 Q. Dr. Cole, are you familiar with an organization referred to  
10 as FEI or in English the International Equestrian Federation?

11 A. Yes, I am.

12 Q. What is FEI?

13 A. It's the Federation Equestrian International. In English,  
14 it is an international regulatory body for Olympic-type events,  
15 Olympic-caliber events.

16 Q. Does FEI publish regulations regarding performance-  
17 enhancing drugs in racehorses?

18 A. Not in racehorses.

19 Q. In any kind of animal?

20 A. Yes, in the competitive horses and the competitive events  
21 that they regulate.

22 Q. Do those, to your knowledge, include limitations on the use  
23 of Epogen?

24 MR. SERCARZ: Objection, hearsay, beyond the scope.

25 THE COURT: The scope objection is sustained.



M1QTFIS4

Cole - Redirect

1 Q. Dr. Cole, in the course of your professional life have you  
2 become familiar with a class of drugs known as blood builders?

3 A. Yes, I am.

4 Q. Is Epogen a blood builder?

5 A. Yes, it is.

6 MR. ADAMS: Ms. Jung, if we could call up what's in  
7 evidence as Government Exhibit 118A. And this will be in the  
8 jury binders as 118A-T. This is a February 26, 2019 call  
9 between Seth Fishman and an unidentified male.

10 Ms. Jung, if you give us one moment for the jury to  
11 collect the binders.

12 THE COURT: I think we're ready whenever you are.

13 (Audio recording played)

14 MR. ADAMS: Can we go now to 136C and the  
15 corresponding transcript, please. 136C. This is a May 6, 2019  
16 call between Seth Fishman and John Pundyk, for the record.

17 And Ms. Jung, we can go ahead and play.

18 (Audio recording played)

19 MR. ADAMS: Ms. Jung, if we could call up 141A,  
20 please. And the corresponding transcript, 141A-T is in the  
21 jury binders. This is June 6, 2019 call between Seth Fishman  
22 and John Pundyk.

23 THE COURT: Okay.

24 MR. ADAMS: Thank you, your Honor.

25 Ms. Jung, you can play.



M1QTFIS4

Cole - Redirect

1 (Audio recording played)

2 MR. ADAMS: Ms. Jung, if we could go to 141B, please,  
3 continuation of the same call.

4 You can go ahead.

5 (Audio recording played)

6 MR. ADAMS: If we could go to 141C, please,  
7 continuation of the same call.

8 (Audio recording played)

9 MR. ADAMS: If we could do 141D, please, continuation  
10 of the same call.

11 (Audio recording played)

12 BY MR. ADAMS:

13 Q. Dr. Cole, to your knowledge, is it legal or illegal to deal  
14 cocaine in the United States?

15 A. Illegal.

16 MR. ADAMS: No further questions, your Honor.

17 THE COURT: Mr. Sercarz?

18 MR. SERCARZ: Nothing further, thank you.

19 THE COURT: All right. Dr. Cole, thank you very much.  
20 You are excused with the thanks of the Court.

21 And your next witness, Mr. Adams?

22 MR. ADAMS: Your Honor, the government will be calling  
23 Ross Cohen.

24 (Continued on next page)

25



M1QTFIS4

Cohen - Direct

1 ROSS COHEN,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ADAMS:

6 Q. Good afternoon, Mr. Cohen.

7 A. Good afternoon.

8 Q. How old are you?

9 A. Fifty years old.

10 Q. And where were you born?

11 A. New York City.

12 Q. Did you attend college?

13 A. Yes, I did.

14 Q. Where did you attend college?

15 A. State University of New York at Morrisville.

16 Q. What did you study at Morrisville?

17 A. I studied animal science, Standardbred racing.

18 Q. Did you receive any degrees in animal science or  
19 Standardbred racing?

20 A. Yes, an associate's in applied science.

21 Q. When did you graduate from Morrisville?

22 A. 1991.

23 Q. After you graduated from Morrisville, what did you do to  
24 earn money?

25 A. I went to work as a groom and assistant trainer in Goshen,



M1QTFIS4

Cohen - Direct

1 New York.

2 Q. What does a groom do?

3 A. A groom basically gets up early in the morning and makes  
4 sure the horses are fed, and if you're at a farm you will --  
5 once the horses are done eating you will take them out to a  
6 field and let them run and kick while you go back in and clean  
7 the stalls, scrub your water buckets, make sure you set up  
8 grain for the following morning. And then you would either  
9 bring the horses in and brush them, let them have a drink, and  
10 then you would get their equipment and put their equipment on  
11 them to exercise or jog.

12 So they go out on the track, either you would jog them  
13 or somebody else that works for the trainer would jog them, and  
14 then when they came in you would take their equipment off, give  
15 them a bath, then put a blanket on and put them in their  
16 stalls, let them have hey, and move on to your next animal.

17 And once you're done with your amount of horses, you  
18 would brush them up, put liniments on their legs, take care of  
19 their feet, any scratches or anything, and then put them in the  
20 stall and have them have their lunch and eat their hey and move  
21 forward.

22 Q. As a groom, did you have any supervisor?

23 A. Usually the assistant trainer or the trainer.

24 Q. And can you describe the duties of a trainer?

25 A. The trainer makes up the schedule for the animals and



M1QTFIS4

Cohen - Direct

1 communicates with the owners of the animals and is in charge of  
2 all the employees and makes sure the horses are put into race  
3 and basically is the boss.

4 Q. When you say "put into race," what do you mean?

5 A. Like enter in their proper races, like by conditions, money  
6 earnings, claiming, just different conditions.

7 Q. And when you were working as a groom after graduating from  
8 Morrisville, were you working with any particular kind of  
9 horse?

10 A. Standardbred horses.

11 Q. Is there a difference between Standardbred and Thoroughbred  
12 horses?

13 A. Yes, Standardbred has a cart behind them and Thoroughbreds  
14 have a jockey on top of them.

15 Q. So they race at different racetracks?

16 A. Yes.

17 Q. How long did you work as a groom, approximately?

18 A. So that was in '91 I worked as a groom, assistant trainer  
19 for about three, four years.

20 Q. And after three or four years, did your role change in some  
21 way?

22 A. I took an owner on and horses on and opened up my own  
23 public stable.

24 Q. And at that time did you become a trainer?

25 A. Yes. Well, I had my trainer's license before that, but I



M1QTFIS4

Cohen - Direct

1 went on my own then.

2 Q. When did you obtain your trainer's license?

3 A. In Morrisville we took a course on the test and we took the  
4 test in college.

5 Q. And with what state were you licensed at the time that you  
6 took on your own stable?

7 A. New York.

8 Q. Have you ever been licensed in any other states?

9 A. I was licensed in New Jersey, Pennsylvania, Massachusetts,  
10 and New Hampshire.

11 Q. Is that all as a racehorse trainer?

12 A. Correct, yes.

13 Q. Did there come a time that you began working at Yonkers  
14 Raceway?

15 A. Yeah, that was in the 1994 timeframe.

16 Q. And can you describe the operation that you had at Yonkers?

17 A. I had a few horses to begin with and then acquired more and  
18 more while stabled at Yonkers.

19 Q. And for the jury, can you describe physically the layout of  
20 where the horses are at the racetrack?

21 A. At Yonkers there's a stable area with stalls, an upper  
22 level and a lower level, and the horses are stabled there on  
23 the grounds.

24 Q. Are you familiar with the term "backstretch?"

25 A. Yes.



M1QTFIS4

Cohen - Direct

1 Q. What's the backstretch?

2 A. That's where the horses are stabled, where the stalls are.

3 Q. And do horses that are stabled at Yonkers also compete at  
4 Yonkers?

5 A. Yes.

6 Q. Was Yonkers racetrack the only racetrack that you competed  
7 at when you were stabled at Yonkers?

8 A. I would once in a while have horses racing at Monticello  
9 and Meadowlands.

10 Q. Sorry, at?

11 A. Meadowlands in New Jersey.

12 Q. With respect to the license that you maintained in New  
13 York, in general, what set of rules are you required to follow  
14 to maintain your license?

15 A. You need to follow the rules of the New York State. Then  
16 it was the Racing and Wagering Board, but it's the New York  
17 State Gaming Commission now.

18 Q. Do the rules of the New York State Gaming Commission relate  
19 in any way to the administration of drugs to the racehorses  
20 under your care?

21 A. Yes.

22 Q. What were some prohibited practices that applied to you as  
23 a trainer in New York State?

24 MR. SERCARZ: What's the date for this, your Honor?

25 THE COURT: Can you clarify, Mr. Adams? I think he



M1QTFIS4

Cohen - Direct

1 said, but you can clarify.

2 MR. ADAMS: Certainly.

3 BY MR. ADAMS:

4 Q. Mr. Cohen, roughly what years were you stabled at Yonkers  
5 Raceway?

6 A. From 1994 to 1997.

7 Q. And in that period, to begin with, what were some of the  
8 prohibited practices that applied to you with respect to  
9 medications?

10 MR. FERNICH: I'm going to object to this testimony.  
11 I would like to approach, please.

12 THE COURT: Okay. I will see you and Mr. Adams at the  
13 sidebar.

14 (Continued on next page)

15  
16  
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25



M1QTFIS4

Cohen - Direct

1 (At sidebar)

2 MR. FERNICH: Your Honor, I'm growing increasingly  
3 concerned by the testimony of the last witness and now what's  
4 being elicited from this one that we're moving far away from an  
5 adulteration and misbranding case and into a case about  
6 conspiracy to dope racehorses. As your Honor observed in one  
7 of my first pretrial conferences here, this is not a wire or  
8 mail fraud case that they charged against this defendant. They  
9 could have done so, they did not do so.

10 If your Honor looks at the Rojas indictment in the  
11 Middle District of Pennsylvania --

12 THE COURT: I read it.

13 MR. FERNICH: So that indictment sets forth very  
14 specific state regulations that a defendant is charged with  
15 violating, including the provision that the prior witness  
16 testified to, a 24-hour restriction gives the defendants ample  
17 notice of what they're being charged with and doesn't, by the  
18 way, incorporate those state charges into the adulteration and  
19 misbranding counts, just lifts them straight up into the wire  
20 fraud counts. Now, admittedly, some of this evidence has  
21 relevance. I'm not disputing that.

22 What I'm concerned with, and I would like an  
23 instruction from the Court to the jury, that this defendant is  
24 not charged with violating any state racing rules or  
25 regulations, and I will instruct you on the law, the



M1QTFIS4

Cohen - Direct

1 appropriate law at the close of this case. That's the relief  
2 I'm requesting now. I'm quite concerned we're getting into  
3 constructive amendment territory here.

4 THE COURT: I'm not doing that now.

5 Let me hear from Mr. Adams.

6 MR. ADAMS: The intent to defraud in this case goes  
7 directly to the intent to defraud state racing regulators with  
8 respect to the administration of performance-enhancing drugs.  
9 The Court already ruled on this in the context of the motion to  
10 dismiss.

11 This does not relate to anything in the context of the  
12 question I just asked and was about to elicit, but in any event  
13 there's no constructive amendment, this has been well trod  
14 multiple times.

15 Mr. Cohen -- in addition to the fact that all of this  
16 is relevant, all of it goes to intent, Mr. Cohen and the  
17 cooperators have already had their credibility called into  
18 question. Mr. Cohen is about to talk about his own doping  
19 operation, and it's perfectly fair for him to talk about that  
20 in an open and candid way, given that his credibility and the  
21 credibility of all the government's cooperating witnesses is  
22 under attack.

23 THE COURT: Are you claiming he's a co-conspirator?

24 MR. ADAMS: Yes.

25 THE COURT: Look, I don't know how one can talk about



M1QTFIS4

Cohen - Direct

1 an intent to defraud or mislead, among others, racing officials  
2 and the FDA, and the motions to dismiss where I dealt with this  
3 issue before you were in the case --

4 MR. FERNICH: I'm fully familiar with your Honor's  
5 decision.

6 THE COURT: -- talked very clearly about there are  
7 broad range of potential victims and no limitation, frankly, on  
8 the face of the statute.

9 The Rojas case that you referenced is a very different  
10 case than this case and the issue on which it was vacated or  
11 the judgment and conviction was vacated is a different issue  
12 than anything we're dealing with in this case. But one can't  
13 talk about an intent to defraud or mislead by making drugs that  
14 are untestable if you don't talk about testable with respect to  
15 what? You haven't stipulated that these products are drugs.

16 MR. FERNICH: All I'm asking for -- and I disagree  
17 with Mr. Adams' view of the nature of the intent at issue in  
18 the case. I do agree that the evidence is certainly relevant  
19 to motive and potentially relevant to intent. We'll get into  
20 at the appropriate time the thrust of the intent, and I'm not  
21 suggesting remotely that state regulators cannot be cognizable  
22 victims in the case, all I'm requesting right now is an  
23 instruction that he is not charged with violating state racing  
24 rules and regulations and I will instruct you on the  
25 appropriate law at the close of the case.



M1QTFIS4

Cohen - Direct

1 THE COURT: He's not charged with a lot of things.  
2 I'm not going to give a charge on all the things he's not  
3 charged with.

4 MR. FERNICH: The great focus of the last witness's --  
5 look, we have all studied this quite a bit and it's not easy  
6 material. Right now these jurors are sitting there and the  
7 entirety of the last witness's testimony concerned violations  
8 of state racing regulations and performance-enhancing drugs.  
9 I'm not suggesting that PED's --

10 THE COURT: I don't agree with your characterization,  
11 for the record.

12 MR. FERNICH: Let's just say there was substantial  
13 testimony about those subjects. If I'm sitting there right now  
14 on that jury, I'm thinking the guy is a horse doper and let's  
15 be done with it. That's not what the charge here.

16 THE COURT: You're correct about that.

17 MR. FERNICH: So your Honor I'm flagging this now  
18 because I'm concerned that we're getting into a constructive  
19 amendment of the indictment. To the extent they are permitted  
20 to convict him because he is doping racehorses based on  
21 violating state racing rules and regulations, that is, in my  
22 view, a constructive amendment of this indictment. They made a  
23 considered decision to charge this case a certain way and it's  
24 not a straight up wire and mail fraud case. It was a very  
25 pointed remark your Honor made and I took it.



M1QTFIS4

Cohen - Direct

1 THE COURT: You're right about all of that.

2 MR. FERNICH: I've been taking it for months.

3 THE COURT: You're correct about that.

4 MR. FERNICH: Not months, when I came in.

5 And it's angels dancing at the head of a pin for a lay  
6 jury to distinguish between doping racehorses on the one hand  
7 and adulterating and misbranding drugs on the other.

8 THE COURT: With an intent to defraud and mislead.  
9 You keep leaving that off.

10 MR. FERNICH: No, the intent to defraud and mislead is  
11 vital to the case.

12 THE COURT: Correct.

13 MR. FERNICH: One question that was not raised before  
14 and was not resolved by your Honor's decision, intent to  
15 defraud or mislead not whom, but intend to defraud or mislead  
16 about what?

17 THE COURT: You had a chance to make whatever motions  
18 you wanted to make and you chose not to make them.

19 MR. FERNICH: I wasn't in the case, but that's neither  
20 here nor there, but it's a sufficiency of the evidence  
21 question. For now I'm asking for -- if your Honor wants to do  
22 it at the end of case, that's fine. I'm concerned that this  
23 jury is going to be misled and confused into thinking that  
24 they're charging violations of horse -- of state racing  
25 regulations and rules and it's enough to convict him if he



M1QTFIS4

Cohen - Direct

1 doped horses in violation of those rules, and that is not the  
2 case.

3 THE COURT: I'm going to say again: I gave a  
4 preliminary instruction, which you all agreed to --

5 MR. FERNICH: Okay.

6 THE COURT: -- about what the indictment charged, that  
7 was on consent, and at the end of the case, I will give charges  
8 with respect to the law relating to the two counts in the  
9 indictment, and I have no intent of giving instructions on the  
10 myriad of things that have not been charged.

11 MR. FERNICH: Okay. I understand the Court's position  
12 and your Honor understands mine. It's sufficient for now. I'm  
13 requesting the instruction --

14 THE COURT: Don't repeat. I understand.

15 Anything further for the record from the government  
16 since I didn't give you a chance really to speak?

17 MR. ADAMS: All of this is completely neither here nor  
18 there with respect to the question to this witness.

19 THE COURT: Okay. You have my ruling.

20 (Continued on next page)



M1QPFIS5

Cohen - Direct

1 (In open court)

2 THE COURT: All right. I was trying to see --  
3 Mr. McDaniel, are you able to go back to before the sidebar,  
4 and just read the question? And I believe there was an  
5 objection which I did not rule on; is that correct?

6 THE REPORTER: There is a question that was not  
7 answered.

8 THE COURT: Could you read the question?

9 THE REPORTER: I can, your Honor. It looks like it  
10 might be tied into the prior question, as far as the timeframe.  
11 Would you like me to read the prior question as well?

12 THE COURT: If you would, please.

13 (Record read)

14 And then there was an objection?

15 THE REPORTER: That's correct, your Honor.

16 THE COURT: The objection is overruled.

17 Mr. Adams.

18 BY MR. ADAMS:

19 Q. Mr. Cohen, you can respond to the question as it was just  
20 reread.

21 A. You were not allowed to administer any medications race  
22 day.

23 Q. Now, keeping you in 1997, did you receive a letter of  
24 removal from a racetrack in that year?

25 A. Yes, I received a certified letter from Monticello Raceway.



M1QPFIS5

Cohen - Direct

1 Q. And to your understanding, what was the ground for removal?

2 A. They just said "in their best interest" was what the letter  
3 said.

4 Q. And to your knowledge, was that -- was the content of that  
5 letter transmitted to other racetracks?

6 A. Yonkers Raceway found out about the letter and gave me 48  
7 hours to remove from the grounds.

8 Q. And did you, in fact, remove yourself and your horses from  
9 the grounds at Yonkers Raceway?

10 A. Yes, I did.

11 Q. After that revocation, what did you do for a living?

12 A. I still trained horses at Big Z's stables with somebody  
13 else as trainer.

14 Q. Who was that other person?

15 A. At first it was Richard Fulfree, then it was Andrew  
16 ElSanteramo, and then it was Michael Bickham.

17 Q. Let me jump forward in time a bit to roughly the fall of  
18 2001.

19 A. Okay.

20 Q. Were you still training horses in the fall of 2001?

21 A. Yes, I was.

22 Q. And where were you living at that time?

23 A. I was living with Tom Guido in Wertzville, New York.

24 Q. For the witness, please, and not for the jury, can we  
25 please pull up what's been marked for identification as



M1QPFIS5

Cohen - Direct

1 Government Exhibit 10,007.

2 Mr. Cohen, do you see the image on your screen?

3 A. Yes, I do.

4 Q. Do you recognize that person?

5 A. Yes, that's Tom Guido.

6 MR. ADAMS: Your Honor, offering 10,007.

7 MR. SERCARZ: No objection.

8 THE COURT: It will be received.

9 MR. ADAMS: And we can publish, please?

10 JUROR: We don't see it.

11 THE COURT: That's what they mean when they ask for my  
12 permission to publish.

13 (Government's Exhibit 10,007 received in evidence)

14 THE COURT: Is it up? They still can't see it.

15 Okay. Go ahead, Mr. Adams.

16 BY MR. ADAMS:

17 Q. Mr. Cohen, where were you living with Tom Guido in the fall  
18 of 2001?

19 A. In Wertzville, New York.

20 Q. And at that time, what was Tom Guido's job?

21 A. He trained racehorses.

22 Q. At any point while you were living with Tom Guido, did Tom  
23 Guido provide you with any performance-enhancing drug?

24 A. Yes.

25 Q. What performance-enhancing drug was Tom Guido providing you



M1QPFIS5

Cohen - Direct

1 with in late 2001?

2 A. There was something called an X-Breather.

3 Q. And what was your understanding of what that drug did?

4 A. It helped increase the airways on a racehorse.

5 Q. Were there any other performance-enhancing drugs that Guido  
6 was providing you at that time?

7 A. There was a bleeder medication.

8 Q. And what was your understanding of what that drug was used  
9 for?

10 A. It helped stop the exercised induced pulmonary hemorrhage  
11 in a racehorse.

12 Q. At any time that you were living with Tom Guido, did you  
13 discuss Seth Fishman with Tom Guido?

14 A. Yes, we've had conversations.

15 Q. Can you describe those conversations?

16 MR. SERCARZ: Objection. Can you lay a foundation  
17 that it's in the furtherance, your Honor?

18 THE COURT: Yes, please.

19 BY MR. ADAMS:

20 Q. Mr. Cohen, did you discuss performance-enhancing drugs as  
21 they relate to Seth Fishman with Tom Guido?

22 A. Yes.

23 Q. Did you discuss providing -- Tom Guido providing you with  
24 performance-enhancing drugs at that time?

25 A. Yes.



M1QPFIS5

Cohen - Direct

1 Q. Did you discuss providing performance enhancing drugs from  
2 Seth Fishman through Tom Guido to you?

3 A. No.

4 Q. What did you discuss regarding Seth Fishman's provision of  
5 performance-enhancing drugs?

6 A. We discussed the Frozen Pain product and if they had  
7 anything else that might help in racing.

8 Q. If who had anything else?

9 A. If Dr. Fishman did.

10 Q. Did you still have horses under your care as of fall of  
11 2001?

12 A. Yes.

13 Q. And where were those horses stabled in the fall of 2001?

14 A. At Mount Hope Training Center.

15 Q. Where is Mount Hope Training Center?

16 A. In Otisville, New York.

17 Q. Do you know what county that's in?

18 A. Orange County.

19 Q. Were you the only trainer stabled at Mount Hope?

20 A. No.

21 Q. Roughly how many trainers were stabled at Mount Hope in  
22 late 2001?

23 A. Approximately ten to 15.

24 Q. And at that time, what racetracks were you racing at?

25 A. I was racing at Yonkers Raceway, Monticello Raceway, Pocono



M1QPFIS5

Cohen - Direct

1 Downs, mostly.

2 Q. So had there come a point that Yonkers allowed you to race  
3 at Yonkers Raceway again?

4 A. Yes.

5 Q. Approximately when did that happen?

6 A. Around then.

7 Q. And did there come a time that you were again suspended  
8 from Yonkers Raceway?

9 A. Yes.

10 Q. What is a TCO2 positive?

11 A. It is for a high level of baking soda that creates a high  
12 TCO2 in a horse's bloodstream.

13 Q. And to your understanding, what is TCO2?

14 A. It's a total bicarbonate level.

15 Q. And did you, in fact, administer baking soda to horses  
16 under your care?

17 A. Yes, I did.

18 Q. What's the purpose for administering baking soda to horses?

19 A. It helps the horse remove lactic acid from its muscles, so  
20 that it doesn't get tired.

21 Q. And does that have a performance-enhancing effect, to your  
22 knowledge?

23 A. Yes, it does.

24 Q. What were the consequences of the TCO2 positive that you  
25 received?



M1QPFIS5

Cohen - Direct

1 A. There's a fine and a suspension.

2 Q. And were you, in fact, suspended again at that point?

3 A. Yes.

4 Q. And for approximately how long were you suspended?

5 A. Six months, I believe.

6 Q. Mr. Cohen, have you ever administered Epogen to your  
7 horses?

8 A. Yes, I have.

9 Q. What is Epogen, to your understanding?

10 A. Epogen helps the body produce more red blood cells and a  
11 healthy hematocrit and hemoglobin.

12 Q. Does that have a performance-enhancing effect, to your  
13 understanding?

14 A. Yes, it does.

15 Q. When was the last time you used Epogen on a horse?

16 A. At least ten to 15 years ago, or ten to 12 years ago.

17 Q. Are you familiar with a process referred to as drenching?

18 A. Yes.

19 Q. What is drenching a horse?

20 A. Drenching is putting a nasogastric tube into the horse's  
21 nostrils, into the stomach to directly administer fluids or  
22 other substances.

23 Q. When you say "or other substances," what kind of substances  
24 would you drench a horse with?

25 A. Yogurt, Gatorade, water, electrolytes and baking soda.



M1QPFIS5

Cohen - Direct

1 Q. And when -- have you ever drenched a horse with baking  
2 soda?

3 A. Yes, I have.

4 Q. Have you also drenched a horse with drugs?

5 A. Yes.

6 Q. What kind of drugs?

7 A. Bleeder pills, bleeder medicine.

8 Q. And to your understanding, what are bleeder pills?

9 A. They help the horse from having exercised-induced pulmonary  
10 hemorrhaging.

11 Q. How would you administer a bleeder pill through a drench?

12 A. You would crush it up and dissolve it in water and  
13 administrator that drench.

14 Q. Was it possible to administer Epogen through a drench, or  
15 do you have to use another method?

16 A. No, you have to use intravenous.

17 Q. Would you personally to intravenous drugs to horses in your  
18 care?

19 A. Yes.

20 Q. Is Epogen, is that sometimes referred to as a blood  
21 builder?

22 A. Yes.

23 Q. After your TCO2 positive, did you also receive positive  
24 tests for other substances in horses?

25 A. Yes, I did.



M1QPFIS5

Cohen - Direct

1 Q. Positive tests for Percocet?

2 A. Yes.

3 Q. Vicodin?

4 A. Yes.

5 Q. Did you personally administer those drugs to your horses?

6 A. No, I did not.

7 Q. Sitting here today, do you have personal knowledge as to  
8 how those drugs got into the horses that were under your care?

9 A. No.

10 Q. Were you, nevertheless, disciplined for the positive tests  
11 for those drugs?

12 A. Yes, I was.

13 Q. What happened?

14 A. I was given a five-year, reduced to two-year, suspension  
15 and a fine.

16 Q. After that incident, did you continue to train that same  
17 stable of horses?

18 A. I did.

19 Q. Let me turn to Mount Hope again for a moment. From  
20 approximately when to when were you training at Mount Hope?

21 A. I was there probably until 2009.

22 Q. And when you began training at Mount Hope, who was the  
23 owner?

24 A. Larry Thompson.

25 Q. And did that change at some point?



M1QPFIS5

Cohen - Direct

1 A. Yes.

2 Q. Who became the owner?

3 A. Richie Banca bought the farm.

4 Q. Can we please pull up what's in evidence as Government  
5 Exhibit 1908, please.

6 And for the record, this is a December 21st, 2013,  
7 e-mail at the top from LisaRangerEquestology@Gmail.com to  
8 Courtney Adams. "Doc said to send you an e-mail. Stuff for  
9 Richard Banca, you can send to me or to them directly."

10 And can we please pull up now just for the witness,  
11 Ms. Jung, what's -- I'm sorry, what's been marked for  
12 identification as Government Exhibit 10,000.

13 Mr. Cohen, do you see that image?

14 A. Yes, I do.

15 Q. Do you recognize that person?

16 A. Yes.

17 Q. Who is that?

18 A. That's Richie Banca.

19 MR. ADAMS: Your Honor, the government offers 10,000.

20 MR. SERCARZ: No objection.

21 THE COURT: It may be received, and you may publish it  
22 to the jury.

23 MR. ADAMS: Thank you.

24 (Government's Exhibit 10,000 received in evidence)

25 MR. ADAMS: And is that up on the screen?



M1QPFIS5

Cohen - Direct

1 THE COURT: Not everybody has it yet, it seems.

2 MR. ADAMS: Okay. I see nods. Thank you.

3 BY MR. ADAMS:

4 Q. Mr. Cohen, while you were working at Mount Hope, did there  
5 come a time that you encountered a person named Lisa Ranger?

6 A. Yes.

7 Q. Had you encountered Lisa Ranger before arriving at Mount  
8 Hope?

9 A. Yes.

10 Q. When did you first meet this person, Lisa Ranger?

11 A. I had visited Tom Guido down in Florida at the South  
12 Florida Trotting Center on a visit, and Lisa was working for  
13 Dr. Fishman, who was Mr. Guido's veterinarian at the time.

14 Q. Do you recall what time that was, approximately?

15 A. Not exactly, but I would say approximately in the 1998, '99  
16 range.

17 Q. Thank you.

18 And, Ms. Jung, just for the witness, could we please  
19 show what's been marked for identification as Exhibit 10,001.

20 Mr. Cohen, do you recognize that person?

21 A. Yes.

22 Q. Who is that?

23 A. That's Lisa Ranger.

24 MR. ADAMS: Your Honor, the government offers 10,001.

25 MR. SERCARZ: No objection.



M1QPFIS5

Cohen - Direct

1           THE COURT: It will be received and you can publish  
2 it.

3           (Government's Exhibit 10,001 received in evidence)

4 BY MR. ADAMS:

5 Q. Mr. Cohen, when you were at the South Florida Trotting  
6 Center, did there come a time that you met Seth Fishman?

7 A. Yes.

8 Q. Did you speak with Seth Fishman at that time?

9 A. It was just a cordial "hello" and that was it.

10 Q. Did you hire him as your veterinarian at that time?

11 A. No, I did not.

12 Q. Jumping back to the Mount Hope Training Center,  
13 approximately how often would you see Lisa Ranger at the Mount  
14 Hope Training Center?

15 A. About once a week.

16 Q. And --

17 A. If I was up early, you know.

18 Q. And what, if anything, would you discuss with Lisa Ranger  
19 at the Mount Hope Training Center?

20 A. At first, I did not have conversations with her until a  
21 relationship was set forth.

22 Q. Okay. Did that change at some point?

23 A. Yeah. Richie Banca and I became friendly, and he said he  
24 would -- I was purchasing different products to run my stable,  
25 and it was getting costly, and he said that he would set me up



M1QPFIS5

Cohen - Direct

1 with Lisa Ranger to buy products less expensive.

2 Q. When you say "products," what do you mean?

3 A. Like different products that I used in the barn, which was  
4 like phenylbutazone or flunixin and banamine, which are  
5 non-steroidal anti-inflammatories, and Hip Iron and other  
6 vitamins like Caco copper and B complex and B12.

7 Q. The products you just mentioned, did those include  
8 prescription drugs?

9 A. You needed a prescription for some of them, yes.

10 Q. Is banamine a prescription drug?

11 A. Yes.

12 Q. Did those include injectable substances?

13 A. Those were all injectable.

14 Q. You mentioned Hip Iron, what's your understanding of what  
15 Hip Iron is used for?

16 A. It helps in an iron deficiency, and helps the body produce  
17 healthier red blood cells.

18 Q. Okay. And what's the purpose -- what was the purpose, in  
19 your mind, of producing red blood cells?

20 A. To increase oxygen in the horse's bloodstream.

21 Q. Did that have a performance-enhancing effect?

22 A. Yes.

23 Q. At any time that you were interacting with Lisa Ranger, did  
24 you tell her that you were a veterinarian?

25 A. No.



M1QPFIS5

Cohen - Direct

1 Q. Did you have a prescription for any of the drugs that you  
2 purchased from Lisa Ranger?

3 A. I did not.

4 Q. Did you tell Lisa Ranger that you had a prescription for  
5 those drugs?

6 A. No, I did not.

7 Q. Did she ever ask you for a prescription for those drugs?

8 A. No.

9 Q. Who, if anyone, did Ranger tell you that she worked for at  
10 the time that you were interfacing with her at Mount Hope?

11 A. She said she worked for Dr. Fishman.

12 Q. Are you familiar with a company called Equestology?

13 A. Yes.

14 Q. Which drugs, if any, did Ranger sell you with Equestology  
15 on the label?

16 A. I don't recall exactly what drugs came with a label that  
17 said Equestology on it.

18 Q. Let me ask about a different drug. Are you familiar with  
19 something called ACTH?

20 A. Yes.

21 Q. Did you purchase ACTH from Lisa Ranger?

22 A. Yes, I did.

23 Q. Do you recall how that was labeled?

24 A. There was an Equestology label on that.

25 Q. What was the purpose of administering ACTH to your horses?



M1QPFIS5

Cohen - Direct

1 A. It helped stimulate a horse. It helped their adrenal  
2 glands. It just had a performance-enhancing effect.

3 Q. And how did ACTH, provided to you by Ranger, physically  
4 arrive into your hands?

5 A. She would drop off a box with my order once a week, whether  
6 it was before I got to the barn or when I was there.

7 Q. Apart from injectables that you just described, did Ranger  
8 ever sell you drugs in any other form?

9 A. There were bleeder pills that she had told me to try or  
10 suggested.

11 Q. And what, if anything, did she tell you about the effect of  
12 the bleeder pills?

13 A. That they would help stop a horse with exercise-induced  
14 pulmonary hemorrhage issues.

15 Q. What, if anything, did Ranger tell you that Seth Fishman  
16 had said about bleeder pills?

17 A. He said I should try them and that they would help.

18 Q. And what did she tell you about when you should administer  
19 the bleeder pills?

20 A. She had said to give them the night before the race and day  
21 of.

22 Q. And did you do that?

23 A. Yes.

24 Q. Are you allowed to administer bleeder pills on the day of a  
25 race?



M1QPFIS5

Cohen - Direct

1 A. No.

2 Q. Did you know that at the time?

3 A. Yes.

4 Q. What, if anything, did Ranger tell you about whether or not  
5 the substance in the bleeder pills could be tested for?

6 A. She had said that there's always a risk but that they were  
7 not testing right now.

8 Q. Did you ever receive a drug from Lisa Ranger that  
9 specifically told you not to use the drug on race day?

10 A. No.

11 Q. Did you ask Ranger any questions about the testability of  
12 the products that she was selling to you?

13 A. Yes.

14 Q. What did she -- what was her response?

15 A. What I had just said, that they did not test as a positive  
16 test right now, but there's always a risk.

17 Q. Okay. Was testability of those drugs an important factor  
18 for you in deciding whether to purchase them?

19 A. Yes.

20 Q. While you were at Mount Hope, while you were stabled at  
21 Mount Hope, did you ever meet Seth Fishman at that time?

22 A. Yes. He had come around with Lisa one time.

23 Q. I'm sorry, he had come around?

24 A. With Lisa one time.

25 Q. Okay. Was he your veterinarian at that point?



M1QPFIS5

Cohen - Direct

1 A. No, he was not.

2 Q. That one time that he came around, did he come to your  
3 barn, in particular?

4 A. Yes.

5 Q. Who was with him at that time?

6 A. Lisa Ranger.

7 Q. And what, if anything, did Lisa tell you about the purpose  
8 for Seth being there?

9 A. That he needs to come around to say that he's looked at the  
10 horses in order to provide the prescriptions for the  
11 medications that were being purchased.

12 Q. Did he, in fact, examine your horses?

13 A. No.

14 Q. Did he ask you if he could examine your horses?

15 A. No. We just had casual conversation about different issues  
16 with some of the horses, and I might have had him look at some  
17 blood work that I had on the horses.

18 Q. Did he do that for all of your horses?

19 A. No, just a couple.

20 Q. And apart from the one time, did he ever come back to your  
21 barn?

22 A. No.

23 Q. Did he ever call you with concerns about your horse's  
24 health?

25 A. We had conversations on the phone when I had an issue here



M1QPFIS5

Cohen - Direct

1 and there.

2 Q. Can you describe the issues that you had that you discussed  
3 with Seth Fishman over the phone?

4 A. I had some horses that were not performing well. I had  
5 sent them copies of the blood work to look at to get his  
6 opinion.

7 Q. And when you say the blood work, what's your understanding  
8 of what blood work paperwork shows?

9 A. It's a CBC and chemistry, just like a person gets done of  
10 their muscle enzymes, their red blood cells, white blood cells,  
11 liver enzymes, kidney function, just different.

12 Q. Does it reflect red blood cell count?

13 A. Yes.

14 Q. Were you concerned that your red blood cell count might be  
15 lower than optimal for performance?

16 A. On some.

17 Q. Are you familiar with the drug referred to as Frozen Pain?

18 A. Yes.

19 Q. What is Frozen Pain?

20 A. In a conversation with Dr. Fishman, it's the peptides that  
21 are mixed up that help take away some pain and stop horses from  
22 getting tired, really.

23 Q. And when you say "stop horses from getting tired," is that  
24 getting tired in a race or in some other context?

25 A. In a race because it had a performance-enhancing effect.



M1QPFIS5

Cohen - Direct

1 Q. Ms. Jung, if we could please publish what's in evidence now  
2 as Exhibit 10,000.

3 Mr. Cohen remind us who this is?

4 A. That's Richie Banca.

5 Q. Did Richie Banca ever provide you with Frozen Pain?

6 A. Yes.

7 Q. What did he tell you about where he got it from?

8 A. He said he had gotten it from Dr. Fishman.

9 Q. And did you use the Frozen Pain?

10 A. Yes.

11 Q. What was the effect, if any, that you observed?

12 A. There were some bottles that had a great effect, where most  
13 of the horses would win when administered it, and there were  
14 some bottles where there was minimal to no effect.

15 Q. Inconsistent in its effect?

16 A. Yes.

17 Q. Did you ever have any conversations with Seth Fishman about  
18 that inconsistency?

19 A. Yes.

20 Q. Can you describe those conversations?

21 A. I expressed some feelings that they were not consistent,  
22 and in the conversation he said it was very hard to keep stable  
23 and to have proper employees make it, and that that's why he  
24 was going to stop making it.

25 Q. Do you know one way or the other whether he stopped making



M1QPFIS5

Cohen - Direct

1 it at that time?

2 A. I do not know.

3 Q. Did you ask to obtain more Frozen Pain from Ranger or  
4 Fishman?

5 A. Yes, I did.

6 Q. And did you receive any?

7 A. No.

8 Q. Did there come a time that you left Mount Hope Training  
9 Center?

10 A. Yes, in 2009.

11 Q. And where did you move at that time?

12 A. To the Pine Bush training facility in Pine Bush, New York.

13 Q. And do you, offhand, know the county of where Pine Bush is  
14 located?

15 A. Ulster, New York, Ulster County.

16 Q. When you moved to Pine Bush, did you continue to purchase  
17 drugs from Lisa Ranger?

18 A. Yes.

19 Q. Which drugs did that include?

20 A. The same that I had been purchasing, the vitamins and the  
21 phenylbutazone and flunixin, just different products at the  
22 barn, including electrolyte drugs.

23 Q. Did they include prescription drugs?

24 A. Yes.

25 Q. Did you have a prescription for those drugs at that time?



M1QPFIS5

Cohen - Direct

1 A. No.

2 Q. Did you administer those drugs, nevertheless?

3 A. Yes.

4 Q. Who was the doctor associated with the prescription when  
5 you received the bottles?

6 A. Dr. Fishman.

7 Q. Was Dr. Fishman your vet?

8 A. No.

9 Q. When you moved to Pine Bush, did you ever see Dr. Fishman?

10 A. No.

11 Q. Did he ever ask to come visit you at Pine Bush?

12 A. No.

13 Q. Did you, nevertheless, continue to see Lisa Ranger at Pine  
14 Bush?

15 A. Yes.

16 Q. What did you see her doing there?

17 A. She would come by about once a week and then every two  
18 weeks, where she would drop off boxes of supplies to different  
19 trainers at the facility.

20 Q. Okay. Mr. Cohen, are you familiar with a person named Rene  
21 Allard?

22 A. Yes.

23 Q. Who is Rene Allard?

24 A. He was one of the leading trainers in racing, Standardbred  
25 racing.



M1QPFIS5

Cohen - Direct

1 Q. I'm sorry, what kind of racing?

2 A. Standardbred racing.

3 Q. And if you know, where is he stabled?

4 A. He was stabled at Mount Hope.

5 Q. Is that the same facility that you had been stabled at?

6 A. Yes, but he was not there when I was there.

7 Q. And are you familiar with a facility known as Golden Shoe?

8 A. Yes.

9 Q. And do you know where that's located?

10 A. It's in Bullville, New York.

11 Q. What kind of facility is Golden Shoe?

12 A. That's also a Standardbred training facility.

13 Q. Who owns it?

14 A. Tom Guido.

15 Q. And is that the same Tom Guido that we discussed earlier?

16 A. Yes.

17 Q. Are you familiar with Montgomery, New York?

18 A. Yes.

19 Q. Are there any -- have you ever visited a Golden Shoe  
20 facility in Montgomery, New York?

21 A. I visited.

22 Q. Is that the same Golden Shoe facility?

23 A. Yes. I always thought it was Bullville, not Montgomery.

24 MR. ADAMS: Your Honor, I'll read from Government  
25 Exhibit 9012 which is a stipulation.



M1QPFIS5

Cohen - Direct

1 THE COURT: Okay.

2 MR. ADAMS: And skipping the top matter:

3 If called to testify at trial, law enforcement agents  
4 with the Federal Bureau of Investigation would testify that on  
5 March 9th, 2020, law enforcement agents with the Federal Bureau  
6 of Investigation conducted a search of the Golden Shoe Training  
7 Center, a racehorse training facility, at street address 261  
8 Bullville Road, Montgomery, New York 12549, which is the  
9 Bullville property.

10 Government Exhibits 1400 through 1420 and 9500 through  
11 9505 are: One, physical items, including paper records, seized  
12 from the Bullville property at the time of the search; or, two,  
13 photographs fairly and accurately depicting the Bullville  
14 property or photographs fairly and accurately depicting the  
15 items taken during the search of the Bullville property.

16 Your Honor, the stipulation continues with respect to  
17 additional properties and additional exhibits associated with  
18 each property.

19 It's further stipulated and agreed by and between the  
20 parties that the aforementioned government exhibits in this  
21 stipulation, which is Government Exhibit 9012, may be received  
22 in evidence at trial. The government moves for the admission  
23 of 9012 and the exhibits listed through the stipulation.

24 THE COURT: Are you moving them all or just the ones  
25 with respect to Bullville?



M1QPFIS5

Cohen - Direct

1 MR. ADAMS: I'll move them all today.

2 THE COURT: All right. The stipulation will be  
3 received, and pursuant to the stipulation, all of the  
4 referenced exhibits including those that Mr. Adams specified on  
5 the record are a part of the evidence in this case. They are  
6 admitted.

7 (Government's Exhibits 9012 and all of the referenced  
8 exhibits received in evidence)

9 MR. ADAMS: Thank you, your Honor.

10 And now, Ms. Jung, if we could call up 1401 and 1402,  
11 which are among the exhibits associated with the Golden Shoe  
12 Facility.

13 BY MR. ADAMS:

14 Q. Mr. Cohen, did you purchase ACTH from Lisa Ranger at any  
15 point?

16 A. Yes.

17 Q. Did you personally bring ACTH to the Golden Shoe facility?

18 A. No.

19 Q. Can we please call up 1404 and 1405, also from the Golden  
20 Shoe facility?

21 THE COURT: Just to be clear, Mr. Adams, I think the  
22 same stip and exhibits were admitted through Dr. Bowman, no?

23 MR. SERCARZ: I'm sorry, I can't hear you.

24 THE COURT: I said, I think the stipulation and the  
25 exhibits were admitted with Dr. Bowman; is that not correct?



M1QPFIS5

Cohen - Direct

1 MR. ADAMS: If it is correct, then I apologize for the  
2 waste of time.

3 THE COURT: No problem.

4 BY MR. ADAMS:

5 Q. Mr. Cohen, did you ever purchase GNRH from Lisa Ranger?

6 A. No.

7 Q. Did you ever bring a bottle of GNRH to the Golden Shoe  
8 facility?

9 A. No.

10 Q. If we could please pull up 1407 and 1408, also from the  
11 Golden Shoe facility.

12 Mr. Cohen, did you ever purchase a drug known as HP  
13 Bleeder from Lisa Ranger?

14 A. No, I did not.

15 Q. Did you ever bring a drug referred to as HP Bleeder to the  
16 Golden Shoe facility?

17 A. No, I did not.

18 Q. Okay. Apart from Lisa Ranger, have you also obtained  
19 performance-enhancing drugs from other sources?

20 A. Yes.

21 Q. Have you also sold performance enhancing drugs yourself?

22 A. Yes.

23 Q. Who created the drugs that you sold?

24 A. Dr. Greg Skelton.

25 Q. Can we please, for the witness only, pull up Exhibit



M1QPFIS5

Cohen - Direct

1 10,006.

2 Mr. Cohen, do you recognize that exhibit?

3 A. Yes, that's Dr. Greg Skelton.

4 MR. ADAMS: Your Honor, the government offers 10,006.

5 MR. SERCARZ: No objection.

6 THE COURT: It will be received, and you may publish,  
7 if you wish.

8 MR. ADAMS: Thank you.

9 (Government's Exhibit 10,006 received in evidence)

10 BY MR. ADAMS:

11 Q. Mr. Cohen, where is Dr. Skelton based?

12 A. He, at the time, was in Illinois and moved to Indiana.

13 Q. How did you originally meet Mr. Skelton?

14 A. When I was training at Mount Hope Training Center, he came  
15 to do veterinary work for Joe Anderson.

16 Q. Did he, in fact, perform veterinary work at Mount Hope  
17 Training Center?

18 A. Yes.

19 Q. Did you see that?

20 A. Yes.

21 Q. Did you ever see Seth Fishman perform veterinary work at  
22 Mount Hope?

23 A. No.

24 Q. What were some of the products that you sold for Greg  
25 Skelton?



M1QPFIS5

Cohen - Direct

1 A. Something called Sulfur, Bleeder, Cane, Blood Builder, Tie  
2 Up and Joint Block.

3 Q. And for the witness only, please.

4 Mr. Cohen, I'd like to have you look at what's been  
5 marked for identification only as Exhibit 1102 -- I'm sorry,  
6 11 -- apologies, your Honor. 11,002, thank you.

7 THE COURT: No problem.

8 Are you able to see it?

9 THE WITNESS: Yes.

10 THE COURT: Thank you, Mr. Cohen. Okay.

11 BY MR. ADAMS:

12 Q. Mr. Cohen, do you recognize this document?

13 A. Yes.

14 Q. What is it?

15 A. It is my cooperation agreement.

16 Q. Pursuant to this cooperation agreement, did you agree to  
17 plead guilty to a felony?

18 A. Yes.

19 Q. What felony was that?

20 A. Mislabeling, misbranding performance-enhancing drugs.

21 Q. Was that with an intent to defraud or mislead?

22 A. Yes.

23 Q. Under the terms of this agreement, what are you required to  
24 do?

25 A. I'm required to tell the truth, and I'm required to testify



M1QPFIS5

Cohen - Direct

1 when needed.

2 Q. Are you required to meet with the government when asked?

3 A. Yes.

4 Q. Are you required to provide information, if asked by the  
5 government?

6 A. Yes.

7 Q. And were you required to be truthful in meeting with the  
8 government even before testifying today?

9 A. Yes.

10 Q. If you hold up your obligations under this agreement, what  
11 is your understanding of what the government will do for you?

12 A. The government will hopefully write a 5K letter, a  
13 recommendation to the Court for sentencing, but it is still the  
14 Court's discretion as per my sentence.

15 Q. Can you tell us what your understanding of what the 5K  
16 letter is?

17 A. It is just a reduction of -- the possibility of a reduction  
18 of my sentence.

19 Q. Does it guarantee you a reduction of sentence?

20 A. No.

21 Q. What's the maximum sentence of imprisonment that you face  
22 under your guilty plea?

23 A. Five years.

24 Q. Are you promised that you'll get less than five years under  
25 this agreement?



M1QPFIS5

Cohen - Direct

1 A. There's no promise.

2 Q. On page 2 of the agreement, if I can turn you there, have  
3 you also, as part of this agreement, made any agreements with  
4 respect to offenses other than misbranding and adulterating  
5 drugs?

6 A. Yes.

7 Q. Did you, at some point, participate in a bribery scheme  
8 relating to horseracing?

9 A. Yes.

10 Q. What did you do?

11 A. I paid drivers for somebody to hold their horses back in  
12 races.

13 Q. Did you stand to make money from that?

14 A. Yes.

15 Q. And did you make money from that?

16 A. Yes.

17 Q. Did other people make money from that?

18 A. Yes.

19 Q. Did you know that it was wrong at the time that you did it?

20 A. Yes.

21 Q. Is there another offense that this agreement refers to as  
22 well?

23 A. It refers to selling small amounts of marijuana.

24 Q. How often did you do that?

25 A. Just a few times.



M1QPFIS5

Cohen - Direct

1 Q. Where did you do that?

2 A. In Orange County and Sullivan County.

3 Q. Were you paid for the deliveries that you made?

4 A. Yes.

5 Q. And were the people to whom you delivered marijuana adults  
6 or minors?

7 A. Adults.

8 Q. Now, if you live up to your obligations under this  
9 agreement, what is it you expect the government will do with  
10 respect to these crimes?

11 A. To not prosecute me for them.

12 Q. Even if you're not charged with respect to those two  
13 additional crimes, what's your understanding as to whether your  
14 sentencing judge will be made aware of those crimes?

15 A. Yes, the judge will.

16 Q. And, Mr. Cohen, what's your understanding of what happens  
17 to this agreement if you lie on the stand today?

18 A. It's null and void.

19 Q. Ms. Jung, if we could please put up just for the witness,  
20 please, Exhibit 10,004. Mr. Cohen, do you recognize that  
21 person?

22 A. Yes.

23 Q. Who is that?

24 A. Chris Oakes.

25 MR. ADAMS: Your Honor, the government offers 10,004.



M1QPFIS5

Cohen - Direct

1 MR. SERCARZ: No objection.

2 THE COURT: It's received and you may publish.

3 (Government's Exhibit 10,004 received in evidence)

4 MR. ADAMS: Thank you.

5 BY MR. ADAMS:

6 Q. Mr. Cohen, where is Mr. Oakes based?

7 A. He was based in Wilkesboro, Pennsylvania.

8 Q. And at what period of time was he based in Wilkesboro, as  
9 far as you know?

10 A. As far as I know, ten to 15 years; from 2005, I think,  
11 until 2020, or even maybe currently.

12 Q. Did you ever sell Greg Skelton products to Chris Oakes?

13 A. Yes.

14 Q. Which products did you sell?

15 A. All of the ones I talked about Pain, Bleeder, Blood  
16 Builder, Tie Up, Joint Block, Sulfur.

17 Q. And if we could take down Mr. Oakes' photo, and for the  
18 witness only, 10,009, please.

19 Mr. Cohen, do you recognize this person?

20 A. Yes.

21 Q. Who is that?

22 A. Marcos Zulueta.

23 MR. ADAMS: Your Honor, the government offers 10,009.

24 MR. SERCARZ: No objection.

25 THE COURT: It is received and you can publish it.



M1QPFIS5

Cohen - Direct

1 (Government's Exhibit 10,009 received in evidence)

2 MR. ADAMS: Thank you.

3 BY MR. ADAMS:

4 Q. Mr. Cohen, did you ever sell Skelton products to Marcos  
5 Zulueta?

6 A. Yes.

7 Q. Which products?

8 A. Same Pain, Blood Builder, Bleeder, Sulfur, Joint Blocker,  
9 Tie Up.

10 Q. And, Ms. Jung, if we could take this down and, just for the  
11 witness, please, 10,003.

12 Mr. Cohen, do you recognize this person?

13 A. Yes.

14 Q. Who is this?

15 A. That's George Navarro.

16 MR. ADAMS: Your Honor, the government offers 10,003.

17 MR. SERCARZ: No objection.

18 THE COURT: It's received and you can publish.

19 (Government's Exhibit 10,003 received in evidence)

20 BY MR. ADAMS:

21 Q. Mr. Cohen, are you familiar with a horse called XY Jet?

22 A. Yes.

23 Q. Directing your attention now to on or about March 30th of  
24 2019, did you watch XY Jet run in a race on that day?

25 A. Yes, I did.



M1QPFIS5

Cohen - Direct

1 Q. What race did you watch him run in?

2 A. The name, I think, is Mod El Sheen. I don't know it  
3 exactly, but it was in Dubai.

4 Q. It was in, I'm sorry?

5 A. It was in Dubai.

6 Q. And were you in Dubai for that race?

7 A. No.

8 Q. How did you watch it?

9 A. I watched it either on TV or my tablet.

10 Q. What was the outcome of that race?

11 A. He won.

12 Q. And who was the trainer of XY Jet?

13 A. George Navarro.

14 Q. And if we could call up Government Exhibit 401-K, which is  
15 in evidence through Government Exhibit 9008. These are  
16 messages obtained from an Apple iPhone found on Seth Fishman's  
17 person on April 1st, 2019.

18 And, Ms. Jung, we're actually going to walk through  
19 this from the bottom up. If we could please go to page 68 to  
20 begin with. And, Ms. Jung, if you could take that down for the  
21 jury for one moment.

22 MR. ADAMS: Your Honor, to the extent it wasn't  
23 previously offered, this is in through the stipulation 9008,  
24 and we've offered a series of the exhibits on this stipulation,  
25 specifically 401-A through 401-G. I'll offer now 401-I through



M1QPFIS5

Cohen - Direct

1 401-II, which is exhibits off the Apple iPhone X from Seth  
2 Fishman's person on April 1st, 2019, as well as the additional  
3 exhibits listed through the remainder of the stipulation.

4 THE COURT: Right. Has the stipulation itself already  
5 been offered.

6 MR. ADAMS: It has, it's in, your Honor. It's the  
7 electronic stipulation, 9008.

8 MR. SERCARZ: No objection.

9 THE COURT: All right. It is received, along with  
10 all -- well, it has been received already, and all of the  
11 exhibits listed in that stipulation, as agreed to between the  
12 parties, are admitted.

13 MR. ADAMS: Thank you, your Honor.

14 (Government's Exhibits 9008 and all of the exhibits  
15 listed in the stipulation received in evidence)

16 MR. ADAMS: And we can put 401-K back up. And if we  
17 can go to page 68. Thank you. And reading on the bottom line  
18 and then rising up from here.

19 March 10, 2016. Outgoing text, reading, "Seth  
20 Fishman." And immediately above that, an incoming text to the  
21 same phone from a person indicating being George V, reading,  
22 "Is Jorge. If you can, please call me. Thank you."

23 If we could please go to the next page, page 67, and  
24 the second line. Reading: "JNavarroStables@Gmail.com," and  
25 immediately above that, the top line, reading: "All I need is



M1QPFIS5

Cohen - Direct

1 instructions how to use everything and how much do I owed you.

2 Thank u."

3 If we could go to page 66 next, and starting at the  
4 bottom. Incoming from George V: "Call me when u can, please."  
5 The next line: "TB-7 once a week hole bottle IM or IV." And  
6 outgoing message from the Seth Fishman phone: "I prefer IV for  
7 both TB-7 and PG2. Whole bottle for both."

8 And going up. I'm sorry. From there to page 65.  
9 That's good, Ms. Jung. Thank you. The fourth line from the  
10 top, an outgoing message from the Fishman phone. Reading:  
11 "Pure ITPP." Response: "How much." And an outgoing message:  
12 "\$55 per vial."

13 Can we go to the next page, 64, middle line. Outgoing  
14 from the Seth Fishman phone: "There are two ways of using it  
15 that are most popular. The first day is the entire bottle  
16 preferably three to four hours out. The second way is half the  
17 bottle the day before usually the night before, and the  
18 remainder 3 to 4 hours out."

19 If we could now jump a bit to page 26, please. I'll  
20 direct the Court's attention and the jury's attention to the  
21 middle line. Incoming message from George V, reading: "Need  
22 pills for Dubai ASAP." Response above that is: "Please." I'm  
23 sorry, a further message, incoming, reading: "Please."  
24 Response: "How many pills you want? What address do I send  
25 them?" And at the top, an address reflecting Cooper City,



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Cohen - Direct

1 Florida. This chain dated March 18th, 2018.

2 If we could go to next, page 25, bottom line: "1,000  
3 pills. Once I get back I wanna sit down with u and talk about  
4 blood product also boss. Thank u." Also on March 18th, 2018.

5 If we could jump now to page 16, second to top line.  
6 Outgoing: "Where you want pills and BB3 sent." Response:  
7 "Eatontown, New Jersey."

8 If we could go to page 12, please, middle of the page.  
9 Incoming message from George V: "Need 20 bb3." July 23rd,  
10 2018. Above that "Where you want me to send to?" Response:  
11 "NJ address."

12 Page 5, please, Ms. Jung, and reading from the bottom.  
13 Outgoing from the Seth Fishman phone: "You never gave me  
14 feedback on blood builder. Also had the bleeding paste."  
15 Incoming response: "I love it." Outgoing from the Fishman  
16 phone: "Which? Never sent bleeding paste."

17 Ms. Jung, can we go to page 1, please. I'm sorry,  
18 Ms. Jung. Actually, if we could take that down, and for the  
19 witness only, could we please, for the witness only, please.  
20 Thank you. Can we please display what's marked for  
21 identification as Government Exhibit 13,000 and can we please  
22 mute. Let me know when you're muted. Thank you and can we  
23 pause here, please.

24 BY MR. ADAMS:

25 Q. Mr. Cohen, do you recognize the clip that just played in



M1QPFIS5

Cohen - Direct

1 front of you?

2 A. Yes, that was the Dubai race of XY Jet.

3 Q. Your Honor -- Have you reviewed that video prior to your  
4 testimony?

5 A. Yes.

6 MR. ADAMS: Your Honor, the government offers  
7 Exhibit 13,000.

8 MR. SERCARZ: No objection.

9 THE COURT: It will be received.

10 (Government's Exhibit 13,000 received in evidence)

11 MR. ADAMS: And, Ms. Jung, now please, if you could,  
12 turn the volume up and publish for the jury.

13 (Video being played)

14 BY MR. ADAMS:

15 Q. Mr. Cohen, do you recognize the person who appears in the  
16 picture in picture?

17 A. Yes, that's George Navarro.

18 Q. Who won the race that we just watched?

19 A. XY Jet.

20 Q. How much was the purse from that race, if you recall?

21 A. I don't recall.

22 MR. SERCARZ: Objection.

23 Q. If we could go to Government Exhibit 401-K one more time?

24 THE COURT: For the record, the objection is  
25 sustained, but the answer was "I don't recall."



M1QPFIS5

Cohen - Direct

1 MR. SERCARZ: Yes, your Honor.

2 MR. ADAMS: If we could go to 401-K, please, and  
3 directing the attention here to the first line from the bottom  
4 up, reading March 30th, 2019. Outgoing from the Fishman phone:  
5 "Congratulations, just saw your race." Incoming response:  
6 "Thank you, boss. You're a big part of it."

7 No further questions, your Honor.

8 THE COURT: All right. Why don't we take the  
9 afternoon break now, and then, Mr. Sercarz, you'll be up for  
10 cross. All right?

11 Excuse me. Before we go, Mr. Cohen, you remain under  
12 oath. You cannot speak about the case with anybody while you  
13 remain under oath.

14 Ladies and gentlemen, you can leave your materials  
15 here, and just as a reminder, please don't discuss the case  
16 while you're on your break. All right? Thank you.

17 (Jury not present)

18 THE COURT: All right. Please be seated for a moment.

19 Just for the record, Mr. Cohen asked me, by mouthing,  
20 does he stay here when the jury walked out, and I told him yes.  
21 Please stand for the jury out of respect for the jury system,  
22 and you don't move while the jury is moving.

23 But you're free to leave the witness stand now, but  
24 subject to my admonition that you not discuss the case because  
25 you remain under oath. All right?



M1QPFIS5

Cohen - Direct

1 (Witness temporarily excused)

2 So I'll see everyone back here in 10 to 15 minutes.

3 Thank you.

4 (Recess)

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M1QTFIS6

Cohen - Cross

1 (Jury present)

2 THE COURT: Mr. Sercarz, cross-examination.

3 And Mr. Cohen, you remain under oath.

4 THE WITNESS: Yes.

5 CROSS-EXAMINATION

6 BY MR. SERCARZ:

7 Q. Mr. Cohen, my name is Maurice Sercarz. I represent  
8 Dr. Fishman.

9 You told the ladies and gentlemen of the jury that you  
10 had a bachelor's degree that you earned here in New York at the  
11 state university, is that correct?

12 A. No, sir.

13 Q. I'm sorry, I misunderstood you.

14 A. It's an associate's in appliance science degree.

15 Q. And the degree had to do with horses, am I correct?

16 A. Yes, sir.

17 Q. What exactly was the degree?

18 A. It's an associate's in applied science, it's an animal  
19 science degree but it was in Standardbred racehorses.

20 Q. After you finished your degree you got a job working as a  
21 groom, is that correct?

22 A. A groom, assistant trainer, yes.

23 Q. And eventually you ascended to the role of a trainer, is  
24 that correct?

25 A. Yes, sir.



M1QTFIS6

Cohen - Cross

1 Q. By the way, you referred to the trainer as the boss, is  
2 that correct?

3 A. Yes, sir.

4 Q. The trainer is the one who is ultimately responsible for  
5 the horses, is that correct?

6 A. Yes, sir.

7 Q. In order to become a trainer you need to have a license, am  
8 I correct?

9 A. Yes, sir.

10 Q. Is there a course of study in order to obtain the license?

11 A. You need to pass a written test and then you need to  
12 harness a horse in front of a person and then you need to train  
13 or exercise the horse in a certain time that is recorded in  
14 front of a person who will then approve of your license.

15 Q. During the course of your study to become a trainer, did  
16 you learn how to administer medication to a horse?

17 A. No, not in school.

18 Q. Did you have experience in administering medication to a  
19 horse under the tutelage of a veterinarian?

20 A. I watched a veterinarian do it and some veterinarians will  
21 show you.

22 Q. Now before you ever -- you began working at the tracks in  
23 approximately 1994, am I correct?

24 A. I graduated school in 1991, so I started working around  
25 racetracks then.



M1QTFIS6

Cohen - Cross

1 Q. All right. And remind us when it was that you first met  
2 Lisa Ranger, in or about.

3 A. In or about '99, I think.

4 Q. Now during the eight-year period before you ever met Lisa  
5 Ranger, you were suspended for prohibited practices with regard  
6 to medication by the New York State Gaming Commission, is that  
7 correct?

8 A. Yes, sir.

9 Q. You were removed from Monticello racetrack, is that  
10 correct?

11 A. I was sent a trespass notice certified letter.

12 Q. You were sent a comparable letter and asked not to appear  
13 any further at Yonkers Raceway, is that correct?

14 A. No, I did not receive a letter from Yonkers Raceway, they  
15 just called me in and verbally told me.

16 Q. After you were told to leave those two racetracks, you  
17 mentioned you continued to train horses, is that correct?

18 A. Yes, sir.

19 Q. Was that a violation of the terms of your removal from  
20 those two race tracks?

21 A. There were no terms in the letters, but it was assumed that  
22 I shouldn't race there, but at the time my license was not  
23 suspended.

24 Q. All right. In the fall of 2001 you lived with Mr. Guido,  
25 am I pronouncing his name correctly?



M1QTFIS6

Cohen - Cross

1 A. Yes, sir.

2 Q. And he was a trainer, am I correct?

3 A. Yes, sir.

4 Q. And he provided you with performance-enhancing drugs in  
5 connection with your horses at that time, is that correct?

6 A. Yes, sir.

7 Q. You were readmitted to Yonkers Raceway after the period of  
8 your suspension, is that correct?

9 A. Yes, sir.

10 Q. And you were once again fined and suspended when some of  
11 your horses had false positives, is that correct?

12 A. Yes.

13 Q. And among the drugs that you were responsible for  
14 administering to them that generated the false positives that  
15 got you in trouble were TCO2, am I correct?

16 A. I did receive TCO2 positives, yes.

17 Q. Epogen, am I correct?

18 A. I did not.

19 Q. You did not?

20 A. Administer Epogen.

21 Q. Now you mentioned that you were disciplined in connection  
22 with the fact that horses tested positive for Percocet and  
23 Vicodin, is that correct?

24 A. Correct.

25 Q. This is all during the period before you ever met Lisa



M1QTFIS6

Cohen - Cross

1 Ranger, isn't that correct?

2 A. No, it was after.

3 Q. In 2009 you mentioned that Richie Banca, B-A-N-C-A, became  
4 the owner of Mount Hope Raceway, is that correct?

5 A. No, I did not mention the year.

6 Q. Was it in or about that time that he became the owner of  
7 Mount Hope?

8 A. I think it was earlier than that, sir.

9 Q. All right. And it was sometime thereafter that you  
10 encountered Lisa Ranger at the South Florida Training Center,  
11 am I correct?

12 A. No, that was in 1999.

13 Q. That was your first encounter with Lisa Ranger?

14 A. Yes.

15 Q. But you did no business with her on that occasion, is that  
16 right?

17 A. Correct.

18 Q. So when you began purchasing products from Lisa Ranger,  
19 that was in or about 2009?

20 A. It was way earlier than that, sir.

21 Q. When was it?

22 A. Probably around the 2000 to 2001, maybe -- in the early  
23 2000s.

24 Q. And you testified about the fact that there came a time  
25 when Lisa Ranger dropped off to you some Breeder Plus and she



M1QTFIS6

Cohen - Cross

1 suggested to you that it was recommended by Dr. Fishman, do you  
2 recall that?

3 A. Bleeder pills not Bleeder Plus.

4 Q. Bleeder pills?

5 A. Yes, sir.

6 Q. When was that?

7 A. It was probably in the early 2000 area or 2005 area.

8 Q. Now it was Lisa that told you that Dr. Fishman suggested  
9 that these would be good products to administer to your horses,  
10 is that correct?

11 A. Yes, sir.

12 Q. The recommendation came from her, is that correct?

13 A. Yes, sir.

14 Q. When you administered those drugs, you found that they  
15 didn't work, isn't that correct?

16 A. They didn't work to my satisfaction.

17 Q. You told the ladies and gentlemen of the jury that you had  
18 a conversation with Dr. Fishman about these substances later  
19 on, am I correct?

20 A. Yes, sir.

21 Q. And Dr. Fishman told you that they were unstable, he  
22 couldn't keep them stable, is that correct?

23 A. Not the bleeder pills, we talked about the Frozen Pain.

24 Q. The Frozen Pain. You suspected that the medication that  
25 you received was a placebo, isn't that correct?



M1QTFIS6

Cohen - Cross

1 A. I didn't say placebo, I said that they're peptides is what  
2 I was under the assumption.

3 Q. Didn't you suspect that the product you received from Lisa  
4 Ranger just didn't work?

5 A. Yes.

6 Q. And this was a product that you claimed Dr. Fishman was  
7 recommending to you, is that correct?

8 A. The bleeder pills were recommended by Lisa, not Dr. Fishman  
9 directly.

10 Q. Now after engaging in business with Lisa Ranger, you had  
11 occasion to purchase performance-enhancing drugs from a  
12 different veterinarian, isn't that correct?

13 A. Yes, sir.

14 Q. That was Dr. Skelton, am I correct?

15 A. Yes, sir.

16 Q. And you were able to purchase from Dr. Skelton Sulker,  
17 correct?

18 A. Yes.

19 Q. Breeder, correct?

20 A. Yes.

21 Q. Tie Up, correct?

22 A. Yes.

23 Q. Joint Block, is that correct?

24 A. Yes.

25 Q. And pain medication of some type, am I correct?



M1QTFIS6

Cohen - Cross

1 A. Yes.

2 Q. With regard to the products that you purchased from  
3 Dr. Skelton, you used them on horses that you were training, am  
4 I correct?

5 A. Yes.

6 Q. And you also resold them for personal property, am I  
7 correct?

8 A. Yes.

9 Q. To a gentlemen name Marcos Zulueta, am I correct?

10 A. Yes.

11 Q. To Jorge Navarro, am I correct?

12 A. No, I never sold directly to Jorge Navarro.

13 Q. Incidentally, with regard to Mr. Navarro, you were seated  
14 in the witness chair while a series of emails were placed on  
15 the screen. Did you see those?

16 A. Yes, I did.

17 Q. Now Mr. Navarro never discussed with you his relationship  
18 with Dr. Fishman, did he?

19 A. I only met Mr. Navarro once in my life for a 30-second  
20 period.

21 Q. You met Dr. Fishman on an occasion when he came to Mount  
22 Hope Training Center, is that correct?

23 A. Yes, sir.

24 Q. And it was your testimony that he was there just to pretend  
25 he was examining horses, is that correct?



M1QTFIS6

Cohen - Cross

1 A. Yes, sir.

2 Q. Did Lisa Ranger tell you that?

3 A. Yes, sir.

4 Q. But it just so happened that you showed him blood work  
5 regarding your horses, isn't that correct?

6 A. Correct.

7 Q. And that, according to your testimony on direct, you  
8 consulted with him when your horses seemed to be tired and  
9 weren't performing well, isn't that correct?

10 A. Yes, sir.

11 MR. SERCARZ: May I have Government Exhibit 1102 put  
12 back on the screen, please, the cooperation agreement.

13 THE COURT: It's not in evidence, Mr. Sercarz.

14 MR. SERCARZ: Okay, sorry.

15 MR. ADAMS: I'm happy to put it on the screen for the  
16 witness.

17 THE COURT: For the witness only.

18 BY MR. SERCARZ:

19 Q. I can ask you questions without the need to put it on the  
20 screen.

21 Am I correct that in or about June 23rd of 2020 you  
22 entered into a plea and cooperation agreement with the  
23 government?

24 A. Yes, sir.

25 Q. And before you got this agreement were you interviewed by



M1QTFIS6

Cohen - Cross

1 the government on one or more occasions pursuant to a limited  
2 immunity agreement?

3 A. Never had any offer of a limited immunity at all.

4 Q. Do you recall any conversations that you had with agents  
5 before you and your attorney signed this agreement?

6 A. There was no offer. I had meetings with the government  
7 called proffers.

8 Q. Those proffer meetings are what I'm referring to. Do you  
9 remember approximately how many you had?

10 A. There was approximately one in person and then a couple via  
11 Zoom meetings.

12 Q. Would it refresh your recollection if I asked you whether  
13 in connection with those meetings, both the Zoom meeting and  
14 the in-person meeting, you signed what are called proffer  
15 agreements?

16 A. Yes, I did.

17 Q. And you recall that those proffer agreements indicated that  
18 none of the statements that you were making would be used  
19 against you under certain circumstances?

20 A. I don't recall reading that off the top of my head, sir.

21 Q. What was your understanding of the purpose of those proffer  
22 agreements that you had been provided?

23 A. To tell the truth of what I know of the crimes I committed.

24 Q. At that time you hadn't pled guilty to anything, am I  
25 correct?



M1QTFIS6

Cohen - Cross

1 A. Correct.

2 Q. At that time you were facing charges for a host of crimes,  
3 am I correct?

4 A. I was of facing charges for the crimes that I admitted  
5 guilt to.

6 Q. They included purchases of performance-enhancing drugs from  
7 Dr. Skelton and a variety of other people, isn't at that  
8 correct?

9 A. They were mislabeling, misbranding and selling  
10 performance-enhancing drugs.

11 Q. But drugs that were sold to you by Dr. Skelton and others,  
12 am I correct?

13 A. Yes, sir.

14 Q. You also mentioned to the ladies and gentlemen of the jury  
15 that you were involved in fixing races. Do you recall that  
16 testimony?

17 A. Yes.

18 Q. And you knew that you might be in jeopardy for those  
19 crimes, isn't that correct?

20 A. Yes.

21 Q. So you spoke to the government, the agents, about those  
22 crimes and answered their questions, am I correct?

23 A. Yes, sir.

24 Q. Subject to this limited immunity agreement, correct?

25 A. The proffer agreements.



M1QTFIS6

Cohen - Cross

1 Q. And among the people that they asked you about was Dr. Seth  
2 Fishman, am I correct?

3 A. Yes, sir.

4 Q. And it was pursuant to the terms of the proffer agreement  
5 that you answered those questions, am I correct?

6 A. Yes.

7 Q. Did you think it was in your interest to provide  
8 incriminating information on the subject of Dr. Fishman?

9 A. I just spoke the truth and answered truthfully.

10 Q. When you were suspended from Yonkers Raceway, in order for  
11 you to get back in good standing did you have to make any  
12 agreement with them?

13 A. I made an oral agreement, there was no written agreement.

14 Q. But the oral agreement that you made was one in which you  
15 indicated that you would not engage in any criminal activity,  
16 isn't that correct?

17 A. Correct, sir.

18 Q. How long did it take after you were reinstated before you  
19 started violating the rules of the racetrack?

20 A. Almost immediately.

21 Q. Now you have testified for the ladies and gentlemen of the  
22 jury as to your understanding of the plea and cooperation  
23 agreement with the government, and you indicated that it is the  
24 Court that ultimately decides upon your sentence, am I correct?

25 A. Correct.



M1QTFIS6

Cohen - Cross

1 Q. But the sentence is capped by your plea of guilty to one  
2 count of conspiracy to engage in adulteration and misbranding,  
3 am I correct?

4 A. That's my understanding.

5 Q. You are hoping to get a reduction in your sentence based  
6 upon your cooperation with the government, am I correct?

7 A. Yes, sir.

8 Q. And the agreement requires you to, among other things,  
9 attend meetings with the government, am I correct?

10 A. Yes.

11 Q. Provide them with documents and evidence if they should ask  
12 for it, am I correct?

13 A. Yes, sir.

14 Q. And to tell the truth, am I correct?

15 A. Yes, sir.

16 Q. And the understanding is that you will receive this letter,  
17 this 5K1 letter that you described, in support of an  
18 application for leniency at sentencing should the government  
19 decide that you have fulfilled the terms of your cooperation  
20 agreement, am I correct?

21 A. Yes, sir.

22 Q. Who is it that decides whether or not you have given the  
23 government all the documents that it requested?

24 A. I do not know.

25 Q. It's the government that decides, isn't it?



M1QTFIS6

Cohen - Redirect

1 A. I would assume, I don't know for a fact.

2 Q. Who is it that decides whether or not whether or not they  
3 view your cooperation as substantial?

4 A. The government.

5 Q. And is the word "substantial" anywhere defined in the  
6 agreement?

7 A. I do not know.

8 Q. And who is it that decides whether or not you have told the  
9 truth?

10 A. I assume the government.

11 MR. SERCARZ: I have no further questions. Thank you.

12 THE COURT: Thank you, Mr. Sercarz.

13 Mr. Adams.

14 MR. ADAMS: Thank you.

15 REDIRECT EXAMINATION

16 BY MR. ADAMS:

17 Q. Mr. Cohen, you were just asked questions on cross towards  
18 the end regarding certain agreements that you've had with the  
19 government. Do you recall those questions?

20 A. Yes.

21 Q. Do you recall the questions about your proffer agreements  
22 in particular?

23 A. Yes.

24 Q. And you were asked questions about protections that you  
25 received for statements you made in those proffers under



M1QTFIS6

Cohen - Redirect

1 certain circumstances. Do you recall those questions?

2 A. Yes.

3 Q. Were you protected from charges of perjury or obstruction  
4 if you lied to the government in the proffer?

5 A. No.

6 Q. Are you protected today from charges if you lie on the  
7 stand?

8 A. No.

9 Q. What happens to your agreement if you lie on the stand  
10 today?

11 A. It's null and void and ripped up.

12 Q. Is it in your interest to lie today?

13 A. Absolutely not.

14 MR. ADAMS: Your Honor, on the basis of Mr. Cohen's  
15 testimony and cross-examination, the government offers 1102  
16 into evidence.

17 THE COURT: Mr. Sercarz?

18 MR. SERCARZ: No objection.

19 THE COURT: It will be received.

20 (Government's Exhibit 1102 received in evidence)

21 BY MR. ADAMS:

22 Q. Mr. Cohen, does this document anywhere guarantee you a  
23 particular sentence?

24 A. Absolutely not.

25 Q. Who gets to determine your sentence?



M1QTFIS6

Cohen - Redirect

1 A. The judge.

2 Q. And what is it that you expect -- what information do you  
3 expect the government will provide to your sentencing judge in  
4 a 5K letter, if you get one?

5 A. That I fully cooperated, told the truth.

6 Q. Go to page 2 of this agreement, please.

7 And with respect to the other offenses that are listed  
8 in this agreement, what is your understanding to what will be  
9 told to the judge, the sentencing judge, about these offenses?

10 A. The judge will be told about those offenses.

11 Q. Is it your understanding that your sentencing judge learns  
12 both the good and the bad about what you've told the  
13 government?

14 A. Absolutely, yes.

15 Q. You were asked on cross-examination about the stability or  
16 inconsistency of the Frozen Pain. Do you recall those  
17 questions?

18 A. Yes.

19 Q. Again what was your understanding of what Frozen Pain was  
20 intended to do?

21 A. To stimulate the equine athlete to perform better.

22 Q. Were you disappointed in the Frozen Pain that you had  
23 received?

24 A. Sometimes yes and sometimes no.

25 Q. In the circumstances where you weren't disappointed, what



M1QTFIS6

Cohen - Redirect

1 did you observe?

2 A. The horses just won. They competed at a very high level.

3 Q. And when you were disappointed, who did you call about  
4 that?

5 A. I said something to Lisa who then would refer me to  
6 Dr. Fishman sometimes in a conversation.

7 Q. Did you have a conversation with Fishman about that?

8 A. Yes.

9 Q. Why did you reach out to Lisa when you were disappointed  
10 about Frozen Pain?

11 A. I didn't have a direct line to Dr. Fishman.

12 Q. Did you eventually get a direct line to Dr. Fishman?

13 A. Yes.

14 Q. You were asked separately about sales with Dr. Skelton. Do  
15 you recall those questions?

16 A. Yes.

17 Q. And you were asked questions about Jorge Navarro's use of  
18 Dr. Skelton's products. Do you recall that?

19 A. I recall being asked a question about Jorge Navarro, if I  
20 had sold to him.

21 Q. Did you personally sell to Jorge Navarro?

22 A. No, I did not.

23 Q. Were Skelton products provided to Navarro?

24 A. Dr. Skelton sold them directly.

25 Q. Thank you. And you were asked questions about your



M1QTFIS6

Cohen - Redirect

1 training and your education. Do you recall those questions?

2 A. Yes.

3 Q. You testified on cross-examination that you watched  
4 veterinarians at different points in your career, is that  
5 correct?

6 A. Correct.

7 Q. Did you ever study pharmacology?

8 A. No.

9 Q. Do you have any higher degrees in pharmacology?

10 A. No, sir.

11 Q. How about veterinarian medicine?

12 A. No, sir.

13 MR. ADAMS: No further questions, your Honor.

14 THE COURT: Thank you.

15 Any recross?

16 MR. SERCARZ: No, thank you, your Honor.

17 THE COURT: All right. You are excused with the  
18 thanks of the Court, Mr. Cohen.

19 Your next witness, Mr. Adams.

20 MR. ADAMS: Your Honor, the government calls Special  
21 Agent Aaron Otterson.

22 THE COURT: Are you Mr. Otterson?

23 THE WITNESS: Yes, I am.

24 THE COURT: Please remain standing and Ms. Dempsey  
25 will administer the oath.



M1QTFIS6

Otterson - Direct

1 AARON OTTERSON,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. CHOW:

6 THE COURT: And while you're in the witness stand,  
7 Mr. Otterson, you can take your mask off because we have a HEPA  
8 filter and you're within the enclosure.

9 MR. CHOW: May I proceed, your Honor?

10 THE COURT: Yes, thank you.

11 BY MR. CHOW:

12 Q. Good afternoon.

13 Where do you work?

14 A. I work at the Federal Bureau of Investigation.

15 Q. Is that also referred to as the FBI?

16 A. That's correct.

17 Q. What is your position?

18 A. I am currently a supervisory special agent at FBI  
19 headquarters in Washington, DC.

20 Q. How long have you been a supervisory special agent?

21 A. Approximately six months.

22 Q. Prior to that what position did you hold?

23 A. I was a special agent here in the FBI New York office on  
24 the Eurasian organized crime task force.

25 Q. How long have you been with the FBI?



M1QTFIS6

Otterson - Direct

1 A. Almost seven years now.

2 Q. During your time with the FBI, have you participated in the  
3 execution of search warrants of physical locations?

4 A. Yes, I have.

5 Q. Approximately how many times?

6 A. More than ten.

7 Q. Directing your attention to March 14, 2019, did you  
8 participate in a search on that date?

9 A. Yes, I did.

10 Q. What location did you search?

11 A. It was at 121 Bald Mountain Road, Bear Creek Village,  
12 Pennsylvania.

13 Q. What kind of location was it?

14 A. It was a large single-family residence with a barn also  
15 located on the residence.

16 Q. Who did the property belong to?

17 A. Chris Oakes.

18 Q. Was a search warrant obtained prior to conducting the  
19 search?

20 A. Yes, the search warrant was obtained on March 13, 2019.

21 Q. What kind of search warrant was it?

22 A. It was a surreptitious search and seizure warrant.

23 Q. What is a surreptitious search and seizure warrant?

24 A. It basically means it's a warrant that allows you to  
25 conduct the search warrant without notifying the owner or the



M1QTFIS6

Otterson - Direct

1 occupant of the premises.

2 Q. How come you did not want to notify the owner or occupant  
3 of the property?

4 A. This was an ongoing investigation at the time, and to that  
5 point it was a covert investigation that we did not want to  
6 alert the owner of the premises that there was an ongoing  
7 investigation.

8 Q. How many agents participated in the search?

9 A. There were nine law enforcement agents there total,  
10 including myself.

11 Q. How did the operation to search Oakes' property begin?

12 A. The actual search began at about midnight, which would be  
13 12:00 a.m., on March 14, 2019.

14 We initiated the search by sending two agents on to  
15 the property to set up surveillance positions where they could  
16 see both the single-family residence and the barn. And that  
17 was a safety precaution on our part taken to make sure that we  
18 were not going to be alerting anybody if they were home at the  
19 residence at the time of the search.

20 Q. What happened next?

21 A. After about an hour we had determined it was safe for the  
22 rest of the agents to enter the property. The reason for that  
23 is safety is our primary concern when conducting a  
24 surreptitious search warrant. If we end up alerting the  
25 residents that we are there, they might not know who we are.



M1QTFIS6

Otterson - Direct

1 Q. At that point did you and the other agents enter the  
2 property?

3 A. Yes, I believe four or five of us entered at that time in  
4 addition to the two that stayed in their original locations for  
5 surveillance positions.

6 Q. As you and the other agents entered the property, what  
7 steps did you take to remain undetected?

8 A. So the way the property was laid out it was a large  
9 property enclosed by a white picket fence. Bear Mountain Road  
10 or Bald Mountain Road ran east/west. The residence was set  
11 back north of the road a little ways and then the barn was to  
12 the northeast of the residence at the end of the property. The  
13 driveway was running north/south from Bald Mountain Road and  
14 then there was a service road also running north/south from  
15 Bald Mountain Road that was to the east of the property. So  
16 that's what we used to walk back to the barn because that  
17 service road led right to the barn.

18 Q. Did you take any precautions to remain undetected?

19 A. Yes. We purposely chose to conduct the search in the  
20 middle of the night so we had the cover of darkness. We used  
21 flashlights extremely sparingly to not let anybody see we were  
22 there. A couple of the agents had night vision goggles they  
23 were using for surveillance reasons and also to be able to  
24 determine if there were any surveillance cameras on the  
25 property that could alert the occupants to our presence.



M1QTFIS6

Otterson - Direct

1 Q. Where did you go once you entered the property?

2 A. Once we got to the barn we entered on the east side of the  
3 barn via the service road. Myself and one other agent stayed  
4 posted up outside to be able to alert the agents that went  
5 inside the barn for the initial sweep to let them know if  
6 anybody was coming.

7 Q. What is an initial sweep?

8 A. So every time we do a search warrant we will do an initial  
9 security sweep of the premise to make sure nobody's there,  
10 there's nothing that could cause danger or a safety hazard to  
11 any of the agents involved in the search.

12 Q. What happened once the initial sweep was complete?

13 A. Once the initial sweep was complete and we had an idea of  
14 the layout of the barn and where items may be located that we  
15 were interested in, we came up with a plan and split up to see  
16 who would start searching which portions of the barn.

17 Q. Can you give the jury a sense of what the layout was once  
18 you entered the barn.

19 A. So as I said, we didn't use flashlights. So it was a large  
20 barn. It was a multilevel structure. There was a series of  
21 stalls with horses in them. There were multiple like alcoves  
22 or various rooms, openings where they kept supplies and things  
23 for the horses. And then there was a locked room that we found  
24 on the base level of the barn that we ended up searching.

25 Q. Did you enter the locked room?



M1QTFIS6

Otterson - Direct

1 A. Yes, we were able to obtain entry to the locked room which  
2 we believed at that time, based on wire intercepts, to be the  
3 medicine room that we had overheard them referring to on the  
4 wire intercepts.

5 Q. Once you entered the room, could you describe what the  
6 layout looked like?

7 A. Yes. It was a pretty small room with wood paneled walls,  
8 probably I would say no bigger than 10 by 12 feet, rectangular  
9 room. Once you entered the room, on the left side of the room  
10 there was cabinets on the ground with a countertop over those,  
11 and then there were cabinets above those on the wall. And also  
12 in the back left corner of the room there was a full-sized  
13 refrigerator, then on the right side of the room there was a  
14 metal shelving unit with various supplies and items stacked on  
15 that.

16 Q. Did you observe what was on the shelves?

17 A. Yeah, there were some boxes, there was a bag of what  
18 appeared to be pills with some syringes in it, and I think  
19 there was one or two shock machines that they used on the  
20 horses.

21 Q. And did you open the refrigerator?

22 A. Yes, I did.

23 Q. What was in the refrigerator?

24 A. There were a number of cardboard boxes in there that  
25 contained vials of different substances as well as some other



M1QTFIS6

Otterson - Direct

1 miscellaneous substances scattered throughout the refrigerator.

2 Q. What once you surveilled the room, what did you do next?

3 A. We started taking pictures of the room as we found it. And  
4 then once we had taken those pictures we started looking  
5 through everything. On the counter to the left there was a  
6 number of notebooks that we started looking through and taking  
7 pictures of the pages as well as in the cabinets we searched  
8 everything and found various substances.

9 Q. Did you end up seizing anything that day?

10 A. Yeah, we seized approximately 20 items from the room.

11 Q. Generally speaking, what sorts of items did you seize?

12 A. We tried to take samples of whatever we could of the  
13 various substances that we were finding in there which we  
14 assumed to be performance-enhancing drugs.

15 Q. When you say substances, what format did those substances  
16 come in?

17 A. Mostly pill or like powder form.

18 Q. Did you take all of the substances that you observed in the  
19 room?

20 A. No, we did not.

21 Q. How come?

22 A. Because it was a surreptitious search warrant and we did  
23 not want to alert the owner of the premises of the ongoing  
24 investigation. We strategically found substances where there  
25 was enough of them that we could take a sample of it without



M1QTFIS6

Otterson - Direct

1 Mr. Oakes noticing that we had taken something. So we had to  
2 determine which items that we could take without him noticing.

3 Q. After seizing those items, what did you do next?

4 A. We labeled each one of those items and put it in a bag and  
5 then we took a picture of each one of those items that was  
6 labeled 1 through 20, I think it was.

7 Q. And once you were done seizing the items, what did you do?

8 A. They were transported back to the FBI field office to be  
9 processed as evidence.

10 Q. How did you leave the property?

11 A. We tried to put everything back in places as carefully as  
12 we could to make it seem that nobody had been there. We locked  
13 the room as we left and then we entered the premises the same  
14 way that we -- or we exited the premises the same way that we  
15 entered on the service road to the east of the property.

16 Q. You mentioned that you transported the items out from the  
17 premises. Where did you take them after you left the location?

18 A. We went back to our staging location, which was a mile or  
19 two away in a parking lot, and then we had gathered the  
20 evidence items there, determined who was going to be  
21 transporting them back to the field office here in New York.

22 Q. Once you arrived back at the field office, what steps were  
23 taken to inventory the items that you had taken?

24 A. So when we conduct a search we have a piece of paper that's  
25 a collected items log. We'll write down on the piece of paper



M1QTFIS6

Otterson - Direct

1 the item that that we found, where we found it, the agents that  
2 seized it and witnessed it, and a description of the item.

3 Once we get back to the office we take each one of  
4 those items from the collected item log and we enter that in  
5 our records management system that is assigned to a specific  
6 case number. Once that collected item log gets approved  
7 through our records management system it gets assigned what's  
8 known as a 1B number which is specific to that piece of  
9 evidence for that case number.

10 Q. Are you familiar with the term "chain of custody?"

11 A. Yes, I am.

12 Q. What steps did you take to maintain -- withdrawn.

13 What is chain of custody?

14 A. Well, it's a form that we use to document who seized an  
15 item initially and then where that item has transferred custody  
16 throughout its life cycle of processing and getting it into our  
17 evidence room at the FBI.

18 Q. Is the process you just described efforts to maintain that  
19 chain of custody?

20 A. That's correct.

21 MR. CHOW: Your Honor, previously the government read  
22 into evidence Exhibit 9012, which is a stipulation between the  
23 parties.

24 THE COURT: Yes.

25 MR. CHOW: Through that stipulation the government



M1QTFIS6

Otterson - Direct

1 offered the Exhibits 1100 through 1128 and 9300 through 9311,  
2 which I believe were all entered into evidence. I would like  
3 to now show the witness some of them.

4 THE COURT: Yes, that's correct, and you may do so.

5 MR. CHOW: Ms. Jung, could we bring up Government  
6 Exhibit 1100 for everyone, please.

7 BY MR. CHOW:

8 Q. Special Agent Otterson, are you able to see what is on your  
9 screen?

10 A. Yes, sir.

11 Q. What are we looking at here?

12 A. This is a photograph of the refrigerator in the medicine  
13 room that we searched.

14 MR. CHOW: Can we blow up the top shelf with the two  
15 vials on the --

16 Actually take that down. Let's go with the bottom  
17 shelf. Highlight that, please.

18 Q. Special Agent Otterson, are you able to see what's on the  
19 top of any of those boxes?

20 A. Yeah, the white box in the middle I can make out ITP, and  
21 then the larger box on the right-hand side is upside down but I  
22 believe it says VO2 Max.

23 Q. Previously you saw that there was two vials on the top  
24 shelf of the refrigerator, is that right?

25 A. That's correct.



M1QTFIS6

Otterson - Direct

1 MR. CHOW: Can we bring up Government Exhibit 1104,  
2 please.

3 Q. What is this item?

4 A. I believe this is one of the vials that was on the top of  
5 the fridge in the picture we just saw.

6 Q. Can you read anything that you can off of the label of this  
7 vial?

8 A. It says NHP1. Directions: Reconstitute with  
9 bacteriostatic water. Use as directed. Store in freezer and  
10 refrigerate.

11 MR. CHOW: Ms. Jung, can we bring up Government  
12 Exhibits 1106, 1107 and 1108 all together, please.

13 Q. Starting from the top left on your screen, could you read  
14 what is on the outside of the box?

15 A. Lime green NBO550 50Cs in bottle 1 CC P/dose IV clear cap  
16 NVM 5.30 5 CC bottle 1 CC P/dose IV stripe green AV 1.50 TQ 5CC  
17 bottle 1CC IM.

18 Q. And in the photograph on the right-hand side, can you read?

19 A. NVO 5.50.

20 MR. CHOW: Ms. Jung, could you take that down and can  
21 we put up 1109 and 1110 side by side, please.

22 Q. Special Agent Otterson, can you read what it says on the  
23 cover of the box on the left-hand side, please?

24 A. 15 gold cap growth factor IV circle two days out day after  
25 muscles soreness and recovery.



M1QTFIS6

Otterson - Direct

1 MR. CHOW: Can we bring up Government Exhibit 1128,  
2 please.

3 Q. What is this photo of?

4 A. This is a photo of a vial of one of the substances that we  
5 located and seized at the premises.

6 Q. Can you read what it says on the label, please.

7 A. It says PG2, one milligram.

8 MR. CHOW: Can we take this down and put up Exhibits  
9 111 and 112 side by side, please.

10 Q. To the extent you are able to, can you read what's on the  
11 label?

12 A. Yes, this is a photo of the same bottle, two different  
13 angles, it says TB-7, acetylated thymosin B4, and I can't read  
14 the rest of that. The directions, reconstitute with three  
15 milliliters saline and either IV, IM or SQ, best results  
16 when -- I don't see the rest of that -- event and five to seven  
17 days prior to event.

18 MR. CHOW: I may have said 111, I meant 1011 so 1111.

19 Can we bring up Exhibit 1102, please.

20 Q. Is this a photo of another item that you encountered during  
21 the search?

22 A. Yes, part of one of the notebooks that we found and took  
23 photographs of it.

24 Q. Can you please read the entire text?

25 A. Begins with: Captain Hill one half CC pink, 5 CC Factrel,



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Otterson - Direct

1 10 CC VO2, 20 CC clear, 6 CC orange-drench aminos, CMPK bleeder  
2 tube.

3 Second entry: Ella Rose, 6 CC orange, 10 CC VO2, 20  
4 clear, one half CC pink drench aminos CMPK, bleeder pills,  
5 bleeder tube.

6 MR. CHOW: Can we take that down and put up 1125 with  
7 1126 and 1127 together, please.

8 Q. Starting with the left-hand side, you testified earlier  
9 that you encountered some pills with some syringes. Can you  
10 describe for us what we're looking at in Government  
11 Exhibit 1125?

12 A. Yes. So in 1125 that is the metal shelving that I referred  
13 to on the right-hand side of the room as you walked in, and  
14 this is the bag of pills with the two syringes in the bag as  
15 well.

16 Q. Going to the right-hand side, 1126 and 1127, are you able  
17 to read the first line of 1126?

18 A. It says homeopathic bleeder and analgesic oral paste,  
19 directions: Administer 5CC per 100-kilogram body weight six to  
20 eight hours before exercise.

21 MR. CHOW: All right. If we could blow up the bottom  
22 photo for the agent. Thank you.

23 Q. And can you continue reading.

24 A. After before exercise it says for intense bleeders  
25 administer a loading dose 24 hours before exercise.



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1 MR. CHOW: All right. Can we bring up Government  
2 Exhibit 3458, please.

3 And your Honor, this was subject to the revised  
4 stipulation from this morning to add this exhibit.

5 THE COURT: All right. Thank you.

6 Q. Starting from the top, can you read who the email is from  
7 and who the email is to.

8 A. The email is from sethfishman@hotmail.com and it was sent  
9 to John Pundyk. The subject is: RE new products.

10 Q. The date that it was sent?

11 A. Friday, January 27, 2017, at 3:30 a.m.

12 Q. And the body of the email, the top email, please.

13 A. It says see below.

14 Q. And below you see that there was an email previously. Can  
15 you read the header information, so who it's from, who it's  
16 sent to, the subject and the date, please.

17 A. It was from John Pundyk, sent Thursday, January 26, 2017,  
18 at 4:55 p.m., and it was sent to sethfishman@hotmail.com, the  
19 subject says new products. The body says: Hi Seth, here's a  
20 list of what you sent me. PSDS. This one is self-explanatory  
21 and I have customers that already use these amino acids in an  
22 oral form so they know what they are to expect.

23 Q. In this next portion, let the record reflect this next  
24 portion is in red text. Go ahead.

25 A. I suggest bacteriostatic water always because any bacteria



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1 introduced will feed on peptides. All the below doses at for  
2 racehorses. You may consider going higher if not happy.

3 Q. All right. Back to black text.

4 A. MHP1, one vial. White powder, tall vial, black and silver  
5 striped top. How much sterile water and what is the dose?

6 Q. Red text again.

7 A. 30 milliliters.

8 Q. Black text again.

9 A. What is this one supposed to do?

10 Q. Now red text.

11 A. Two milliliters for analgesic/sedation.

12 Q. And back to black text.

13 A. MHP1BP one vial, white powder, short vial, black and silver  
14 striped top. How much sterile water and what is the dose?

15 Q. Red text.

16 A. 20 milliliters.

17 Q. Black text.

18 A. What is this one supposed to do?

19 Q. Red text.

20 A. Two milliliters for analgesic/sedation.

21 Q. Black text.

22 A. MHP1DMT one vial, pink powder, shorter vial, solid black  
23 top. How much sterile water and what is the dose?

24 Q. Red text.

25 A. 20 milliliters.



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- 1 Q. Black text.
- 2 A. What is this one supposed to do?
- 3 Q. Red text.
- 4 A. Two milliliters for analgesic/sedation.
- 5 Q. Black text.
- 6 A. NBN 5.30 two vials white powder looks like 10 CC vial,
- 7 silver top with see-through pop top.
- 8 Q. Go to the next page. Let's read the first two lines.
- 9 A. How much sterile water and what is dose?
- 10 Q. Red text.
- 11 A. Six milliliters.
- 12 Q. Black text.
- 13 A. What is this one supposed to do?
- 14 Q. Red text.
- 15 A. Strong analgesic, give two milliliters.
- 16 Q. I would like to skip down to -- do you see where it says
- 17 NBO 3.20?
- 18 A. Yes.
- 19 Q. Can we start reading from there the black text?
- 20 A. NBO 3.20 four vials white powder, looks like a 3 CC vial,
- 21 silver top with solid white flip-off cover. How much sterile
- 22 water and what is dose?
- 23 Q. Red text.
- 24 A. Two CC and give one CC.
- 25 Q. Black text.



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Otterson - Direct

1 A. What is this one supposed to do?

2 Q. Red text.

3 A. Strong analgesic/sedation.

4 Q. Black text.

5 A. NBO 5.50 two vials white powder looks like a 10 CC vial  
6 with solid lime green flip-off cover. How much sterile water  
7 and what is dose?

8 Q. Red text.

9 A. Six milliliters.

10 Q. Black text.

11 A. What is this one supposed to do?

12 Q. Red text.

13 A. Two milliliters for analgesic/sedation.

14 MR. CHOW: Briefly can we take this down and put back  
15 up 1106 and 1108, please.

16 Q. Do you see in the first row where it says NBO 550?

17 A. Yes.

18 Q. Sorry, on the box on the left-hand side, underneath that  
19 next to "clear cap," what does that say?

20 A. NBN 5.30.

21 Q. And the label on the right side, what does that say?

22 A. NBO 5.50.

23 MR. CHOW: Could we take that down and put up  
24 Government Exhibit 1118, please.

25 Q. Was this another item that was encountered during the



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Otterson - Direct

1 search?

2 A. Yes, it was.

3 Q. Can you read anything you can from the label?

4 A. Yes. So it appears the brand is Equiformance, ITTP Plus.

5 Directions: Reconstitute with 30 milliliters bacteriostatic  
6 water and administer 15 milliliters IV 24 hours and four hours  
7 before exercise.

8 MR. CHOW: Great. We can take that down.

9 Please bring up Government Exhibit 128B, like boy, and  
10 I would like to direct the jurors to take a look in their  
11 binders for tab 128B, like boy, dash T.

12 And for the record, this is a call on April 5, 2019,  
13 between Seth Fishman and an unidentified male.

14 I think everybody has flipped the page.

15 THE COURT: Let's give everyone another minute.

16 MR. CHOW: Okay.

17 THE COURT: Okay.

18 (Audio recording played)

19 MR. CHOW: Why don't we stay in our transcript  
20 binders. Can we bring up 199A, like apple, and if the jurors  
21 could flip to tab 199AT.

22 And for the record, this is a call on February 19,  
23 2019. The participants are Christopher Oakes and Seth Fishman.

24 (Audio recording played)

25 MR. CHOW: All right. Can we stay in our transcript



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1 binder to 199B, like boy, the continuation of the call.

2 (Audio recording played)

3 MR. CHOW: Can we take that down and bring up  
4 Government Exhibit 401K.

5 Your Honor, I intended to go through this exhibit and  
6 actually quite a few more. I don't know how late you intended  
7 to go today, but we could take a break here.

8 THE COURT: If we're at a convenient breaking point we  
9 should break for the day because I promised jury we would aim  
10 for 4:30 and we're well past that.

11 If you're starting a new line, we could break here.

12 MR. CHOW: This is a natural breaking point.

13 THE COURT: Ladies and gentlemen, we'll recess for the  
14 day. Leave your transcript binders here. You can leave your  
15 notebooks in the jury assembly room. Please don't take them  
16 home with you. And please remember not to talk about the case  
17 with anyone, and that includes your family members and your  
18 friends. And please do not read about the case or  
19 independently do any research about the case or anything  
20 involved with the case.

21 All right. Thank you all, and I hope everyone has a  
22 nice evening. We'll be back here tomorrow ready to start at  
23 9:30 a.m.

24 (Jury not present)

25 THE COURT: Mr. Otterson, thank you very much you're



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1 excused for the day. You remain under oath, so please do not  
2 talk about your testimony or about the case with anybody before  
3 you resume the stand tomorrow, okay.

4 THE WITNESS: Thank you, your Honor.

5 THE COURT: Thank you and have a good evening. Thank  
6 you for being here.

7 MR. CHOW: Your Honor, I'm going to hand the witness  
8 the exhibits just to maintain custody.

9 THE COURT: That's fine.

10 (Witness not present)

11 THE COURT: All right. Thank you. I really just  
12 wanted to get a sense of where we are going next. And you had  
13 talked at some point about you needed to put a table with  
14 physical evidence. Have you dispensed with that now?

15 MR. ADAMS: We haven't dispensed with it. We did  
16 shift it back in the batting order, so to speak, so we're  
17 likely to do that tomorrow afternoon would be my guess,  
18 potentially Friday morning.

19 THE COURT: What is next after Special Agent Otterson,  
20 bearing in mind that Mr. Sercarz, of course, will have time  
21 with him.

22 MR. ADAMS: So once Agent Otterson is off the stand we  
23 intend to call Adrienne Hall.

24 THE COURT: F-A-L-L?

25 MR. ADAMS: H-A-L-L. Followed by Jamen James



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1 Davidovich, D-A-V-I-D-O-V-I-C-H. And if we get through the  
2 rest of Mr. Otterson, Ms. Hall, Mr. Davidovich, then Jarret  
3 Concannon, J-A-R-R-E-T-T, C-O-N-C-A-N-N-O-N. And if we get  
4 through Mr. Concannon then we expect we will have some calls to  
5 play and some exhibits to put in, but the government's last  
6 witness is likely Mr. Concannon.

7 MR. SERCARZ: I couldn't hear the end of the comment.

8 MR. ADAMS: The government's last witness is likely  
9 Mr. Concannon.

10 THE COURT: You will update us tomorrow.

11 MR. ADAMS: Just on the basis of today, your Honor, I  
12 expect we're still on the same track we were yesterday, Friday  
13 morning to have our last witness.

14 THE COURT: Okay. Anything else from the government  
15 before you take a seat?

16 MR. CHOW: Your Honor, may I just flag one thing?

17 Mr. Davidovich, prior to taking the stand, I believe  
18 we may want to consider having a brief ex parte -- I mean  
19 outside the presence of the jury proceeding with regard to his  
20 invocation and then a compulsion order issued by the Court. I  
21 don't know how your Honor would like to do that, but in the  
22 past what I have experienced is outside the presence of the  
23 jury he's asked a question, he invokes, and then there's a  
24 compulsion order that is issued requiring his testimony.

25 THE COURT: Who is he?



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1 MR. ADAMS: Mr. Davidovich is a trainer. He does have  
2 exposure. He has counsel. We expect he will invoke the Fifth  
3 before he testifies, and the Court will get a draft immunity  
4 order this evening.

5 THE COURT: I will take a look at it then. So you'll  
6 remind me of that before he takes it the stand.

7 MR. ADAMS: And your Honor, the last thing that I will  
8 mention is we have received no witness list from the defense.  
9 We have no defense exhibits whatsoever other than the one  
10 that's been entered in the course of the trial. We have not  
11 received any discovery under 26.2. And so if the defense  
12 intends to call any witnesses or put in anything in, we expect  
13 that that will be provided tomorrow morning. And we would like  
14 to set a time by which Mr. Fishman needs to make his decision  
15 as to whether he's taking the stand or not.

16 THE COURT: Mr. Sercarz?

17 MR. SERCARZ: If the Court is going to impose a  
18 deadline on us to notify the government as to any exhibits and  
19 as to whether Mr. Fishman will take the stand I will be guided  
20 by the Court's orders in that regard. I can tell you that as  
21 of now I have no concrete information to provide to the  
22 government on this score.

23 THE COURT: On any of those issues or on Dr. Fishman?

24 MR. SERCARZ: The other witness that I had intended to  
25 call was to make an arrangement to call Adrienne Hall as an



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1 adverse witness, and the government has obviated the need for  
2 me to do that.

3 THE COURT: So are there discovery materials that you  
4 need to turn over?

5 MR. SERCARZ: With regard to Ms. Hall, no. There are  
6 other portions of her conversations that I may wish to play.  
7 We're seeking to have them transcribed as we speak and I can  
8 talk to the government about that. They have them, and I can  
9 probably give the government time stamps so that they can play  
10 them even without transcripts. And that would take place on  
11 the cross-examination of the witness now under certain  
12 circumstances.

13 With regard to Dr. Fishman --

14 THE COURT: No, it's fair, I think, for you to reserve  
15 your rights on Dr. Fishman.

16 MR. SERCARZ: Thank you.

17 MR. ADAMS: Your Honor, with respect to the time  
18 stamps for Ms. Hall, it will be very inefficient if we are  
19 provided transcripts live at trial. If we could get them  
20 tonight and get the transcripts we could decide to agree  
21 whether they're accurate.

22 Then with respect to Mr. Fishman, it's well within the  
23 Court's discretion to set a time, doesn't need to be today,  
24 obviously, but a time by which he has to announce that  
25 decision.



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1 THE COURT: Obviously, but it's not going to be today.

2 MR. ADAMS: But I would propose that it be Friday  
3 morning, because we are likely to rest the government's case,  
4 we go directly into the defense case.

5 THE COURT: I think we'll see how your case is  
6 proceeding. I'm not going to force him to make a decision  
7 until he hears virtually your entire case.

8 MR. ADAMS: Thank you, your Honor.

9 THE COURT: Mr. Sercarz, why can't you get these  
10 transcripts done and in order? If you are going to be calling  
11 her as a witness, haven't you started that process?

12 MR. SERCARZ: I have started that process, your Honor.

13 THE COURT: Well, in fairness, we can't really have  
14 transcript recordings played without transcripts.

15 MR. SERCARZ: In the event that I called her, I was  
16 going to have my investigator authenticate the transcripts.  
17 The transcripts have not even been prepared yet. And given  
18 that she is going to be testifying as a government witness,  
19 then I think that my responsibility would be complete if I can  
20 provide the government with time stamps for conversation.

21 It may very well be that on her direct examination she  
22 makes reference to portions of the conversations other than  
23 those that the government will play and there won't be any  
24 necessity for this. It's going to be in the nature of  
25 cross-examination that I seek to play other portions presumably



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1 for context. There are limits on what I'll be allowed to  
2 introduce, I presume. So it's very tough for me to give the  
3 government the kind of discovery that they're seeking when it's  
4 going to be their witness and my cross-examination, your Honor.

5 THE COURT: I'm telling you this, if you haven't given  
6 them the transcript and we don't have an agreed exhibit, which  
7 is the transcription, then you're not playing the audio  
8 recording and you can recall her in your case.

9 MR. SERCARZ: Would it be inappropriate, your Honor,  
10 for me on cross-examination to elicit from the witness a  
11 foundation for playing an extra portion of the tape and then  
12 simply to have it played without a transcript?

13 THE COURT: Yes, because --

14 MR. SERCARZ: She would be laying the foundation which  
15 would govern the issue of admissibility, and there's no  
16 requirement that that a jury have a transcript to assist them  
17 in listening to a tape.

18 MR. ADAMS: Your Honor, I don't disagree. I do think  
19 it would be useful to have a transcript, but it's not strictly  
20 necessary.

21 Two logistical points though: One, to the extent that  
22 Mr. Sercarz does want a transcript, the only reason I flag this  
23 in advance is for efficiency sake so we can review it for  
24 accuracy tonight. It's not really a question of authenticity.  
25 I don't think that we would need an extra witness.



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1           THE COURT: I would agree with that if you're going to  
2 be introducing them.

3           MR. ADAMS: As a practical point, to the extent there  
4 are clips or calls not in evidence through the government's  
5 case that need to be authenticated or reviewed by Ms. Hall,  
6 quote, unquote, outside of the presence of the jury or just for  
7 her, we'll need some headphones provided. My office I'm sure  
8 can provide headphones so she can listen to calls in advance,  
9 but again, if we know in advance which parts we're talking  
10 about, I'm happy to talk with Mr. Sercarz in advance. This may  
11 be completely unnecessary.

12          THE COURT: All I can say is this: Dr. Fishman is  
13 entitled, or his lawyers on his behalf are entitled to hear  
14 your case and to react as they choose to do based on what you  
15 do during your case in chief. And he's not obligated to  
16 anticipate your case or anything like that.

17          All I was suggesting, Mr. Sercarz, is since you told  
18 me you are going to be calling this person as a witness anyway  
19 in your case in chief and now you may be able to do whatever  
20 you wanted to do as part of cross -- although, of course, that  
21 depends on the scope of the direct -- I would have hoped that  
22 you could work cooperatively on this. But if you can't, you  
23 can't, and we'll do it as it plays out.

24          MR. SERCARZ: Your Honor, I will make my best effort,  
25 and I can tell you the government has been extremely



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1 cooperative with me throughout the trial.

2 THE COURT: It appears that way, which is helpful to  
3 me and to the jury.

4 MR. ADAMS: Otherwise nothing else, your Honor.

5 THE COURT: Anything else from you, Mr. Sercarz?

6 MR. SERCARZ: No, your Honor, thank you.

7 THE COURT: All right. You're welcome. Everyone have  
8 a good evening.

9 Thank you to our two court reporters who are here.  
10 Thank you both very much.

11 (Adjourned to January 27, 2022 at 9:30 a.m.)  
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